Fenland
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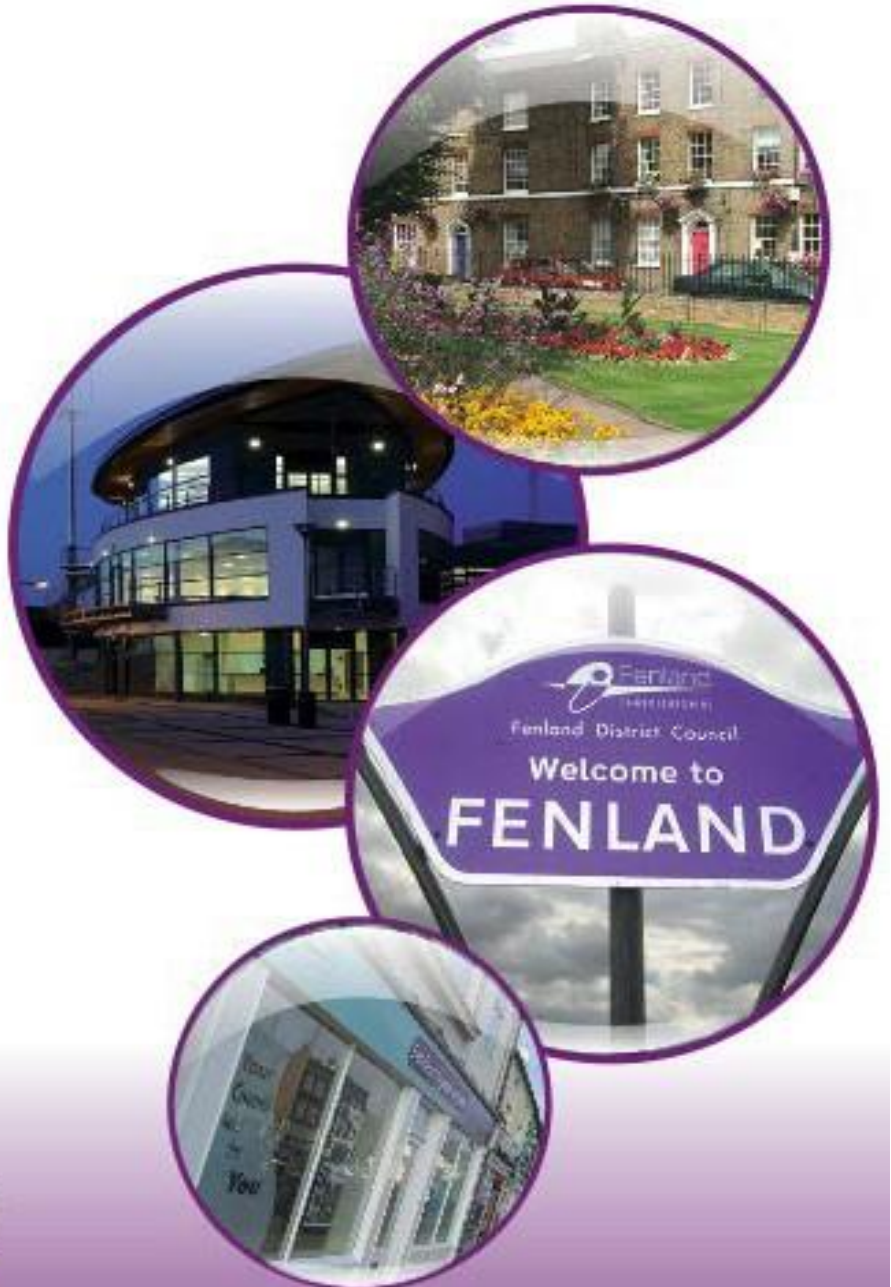
Housing Enforcement Policy

22nd July 2022



CUSTOMER SERVICE EXCELLENCE
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Contents

Introduction

The aim of this policy is to allow the consistent and fair enforcement of housing legislation to raise standards in the private housing sector within the district of Fenland.

The policy is based around the Regulators' Code which this Authority has adopted. The general principles of good enforcement, which are set out in the council's Corporate Enforcement Policy including Prevention Intervention and Enforcement, are to be adhered to by the council in its housing enforcement activities and when carrying out enforcement we will have regard to all legal requirements which may apply to our actions.

All enforcement decisions and actions will be made having due regard to the provisions of equal rights and anti-discrimination legislation. Local Authorities have extensive powers to intervene where they consider there are breaches of housing and letting legislation.

Enforcement of housing standards is an integral part of meeting the council's statutory duties in relation to Private Sector Housing. This policy applies to all tenures; housing associations (registered providers), private sector landlords, letting agents and owner occupiers; and sets out to undertake its housing enforcement role in a consistent, practical, open, and transparent manner; taking into account the Code of Practice for Crown Prosecutors. This policy sets out the majority of the current regulatory legislation that the Council has at its disposal to use. It is not an exhaustive list, and the council reserves the right to implement the enforcement of other legislation, including any new or revised legislation or regulations, prior to any policy updates.

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The fees and charges laid out in the policy will be reviewed on an annual basis as part of the council's fees and charges setting process.

Expectations of Stakeholders

Landlords

The council expects landlords to be aware of their responsibilities and to keep updated with any new or amended legislation/regulations. Where a landlord receives a request for service from a tenant the council expects the landlord to respond in a timely manner and resolve the issues at the earliest opportunity and independent of the council's intervention.

Where a landlord fails to respond, or address their tenants' concerns, the council may intervene to safeguard the tenant's health and safety, and ensuring the landlord complies with their legal duties.

Where the chosen course of action is informal, council officers will advise landlords on how to comply with legislation. The council may ask landlords to respond with their proposal within a reasonable timescale and consideration will be given to any schedule of works.

However, where there is evidence that a landlord has failed to respond to an informal request from either the tenant, or the council officer, or does not progress as per the agreed schedule of works, the council will initiate formal action by either the service of a notice, carrying out works in default and/or prosecution, either via the criminal or civil route.

There may be times where the council identifies properties that require immediate

intervention to protect the health and safety of residents, visitors, or the general public. The council will notify the relevant parties of such intervention within the stipulated legal timeline. Where remedial works are carried out in default, a legal charge will be registered on the title deeds and attempts to recover the debt(s) will be made via the civil route. Once the debt is cleared the registered charge will be removed.

Tenants

Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because landlords can only carry out their obligations under the legislation once they have been made aware of the problem. Wherever possible this communication should be done in writing, allowing 14 days for the landlord to respond, as the documentary evidence will be required by the housing enforcement officers at a later date.

In certain situations, tenants will not be required to write to their landlord first, e.g.:

- where the matter appears to present an imminent risk to the health and safety of the occupants,
- where there is a history of harassment/threatened illegal eviction/poor management practice, or
- where the tenant could not, for some other reason, be expected to contact their landlord/managing agent, e.g., a hospital leaver whose property is in poor condition and cannot be discharged

Where no, or an inadequate response from the landlord/agent has been received, it may be deemed appropriate for the council to intervene. The council will advise tenants as to what action it can take and within what timescales.

The council expects tenants to cooperate with the landlord to facilitate the works to be carried out and to advise the council of any remedial work undertaken by the landlord.

The role of the Private Sector Housing team is to ensure house conditions are safe and healthy and **does not** serve to increase applicants' priority on the housing register.

Owners

Other than in exceptional circumstances, the council expects owner-occupiers, including long leaseholders, to take their own action to remedy hazards at their own properties. The Council will decide whether there are exceptional circumstances in a particular case to justify intervention.

Letting Agents

The council expects agents to be aware of their responsibilities and to keep updated with any new or amended legislation/regulations. Where an agent is managing the maintenance contract on behalf of the landlord and receives a request for service from a tenant, the council expects the agent to respond in a timely manner and resolve the issues at the earliest opportunity, independent of the council's intervention.

Where the agent has managing responsibilities and/or has a legal duty to comply with legislation, the council will take appropriate enforcement action in cases of non-compliance and may serve notices on both the landlord and agent where appropriate.

In cases where there is non-compliance, the council will also consider taking prosecution action against the Letting Agent.

Owners of Empty Homes

The council will work with owners of empty homes to bring their properties back into use.
Where properties remain empty for a period of 2 years or more and the owner fails to cooperate with the council, enforcement action, such as Compulsory Purchase Order, Empty Dwelling Management Order, and Enforced Sale, may be considered; particularly where the empty property is having a detrimental impact on the neighbourhood/community.

Housing Act 2004

The Housing Act 2004 is the principal Act covering statutory action delegated to housing authorities in ensuring tenants are afforded safe, warm, and healthy homes. The Act makes provisions about housing conditions, to regulate houses in multiple occupation (HMOs) and certain other residential accommodation.

https://www.legislation.gov.uk/ukpga/2004/34/contents

Housing Health & Safety Rating System (HHSRS)

The Housing Act 2004, together with Regulations made under it, prescribes the Housing Health and Safety Rating System (HHSRS) as how Local Housing Officers assess housing conditions and evaluate the potential risks to health and safety from any deficiencies identified in dwellings.

The scores for each hazard are ranked in bands. Hazards falling into bands A to C are more serious and are classed as Category 1. Less serious hazards fall into bands D to J and are classed as Category 2. The council has a duty to remove Category 1 hazard and a power to remove Category 2 hazards.

The score is based on the risk to the potential occupant who is most vulnerable to that hazard. However, in determining what action to take, the council will not only take account the score, but also whether the council has a duty or discretion to act, the views of occupiers, the risk to the current and likely future occupiers/visitors and the presence of other significant hazards in the property.

If a Category 1 hazard is identified, the council has a duty to require the responsible person to remedy the defect. The council has discretionary powers to deal with Category 2 hazards and the most appropriate course of action will be determined on a case-by-case basis. Where an improvement notice is served, the council will require sufficient works to abate the hazard.

Hazard Awareness Notices

Hazard Awareness Notice relating to Category 1 Hazards; section 28

Hazard Awareness Notice relating to Category 2 Hazards; section 29

The above notices are deemed appropriate where a hazard or hazards have been identified but are not necessarily serious enough to take more formal action. These notices serve to draw the responsible person's attention to the need for remedial action. These notices should not be used if the situation is considered serious enough for follow up inspections to be made. This notice is not registered as a land charge and has no appeal procedure.

Improvement Notices

Improvement Notices relating to Category 1 Hazards; section 11

Improvement Notices relating to Category 2 Hazards; section 12

Improvement notices will serve as the most appropriate form of enforcement action where Category 1 and/or Category 2 hazards exist.

Prohibition Orders

Prohibition Orders relating to Category 1 Hazards; section 20

Prohibition Orders relating to Category 2 Hazards; section 21

A prohibition order may be appropriate when conditions present a risk, but remedial action is unreasonable or impractical e.g., where there is inadequate natural light to a room or no protected means of escape in fire. The order may prohibit the use of part or all of a premise for some or all purposes. It may also be used to limit the number of persons occupying the dwelling or prohibit the use of the dwelling by specific groups. In an HMO it can be used to prohibit the use of specified dwelling units.

Suspended Notices & Suspended Prohibition Orders

Suspension of Improvement Notice; section 14

Suspension of Prohibition Order; section 23

These may be suspended where enforcement action can safely be postponed until a specified event or time. This can be a period of time or a change in occupancy. Current occupation and wishes may be considered. These may also be used where there is programmed maintenance. The suspensions must be reviewed at least every 12 months. The advantage of suspending a notice is that there is a record of the Local Housing Authority's involvement, and the situation must then be reviewed. It is also recorded as a land charge.

Emergency Remedial Action, Section 40

When the council is satisfied that a Category 1 hazard exists on any residential premises and is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers or visitors and no Management Order is in force under Chapter 1 or 2 of Part 4 of the Act. Emergency Remedial Action may be taken by the Authority in respect of one or more Category 1 hazards on the same premises or in the same building containing one or more flats. The action will be whatever remedial action the council considers necessary to remove an imminent risk of serious harm.

This is likely where the council considers it is immediately necessary to remove the imminent risk of serious harm, there is no confidence in the integrity of any offer made

by the owner to immediately address the hazard, and the imminent risk of serious harm can be adequately addressed through remedial action to negate the need to use an Emergency Prohibition Order. If this action is taken, a notice will be served within 7 days of taking the Emergency Remedial Action, detailing the premises, the hazard, the deficiency, the nature of the remedial action, the date action was taken, and the rights of appeal.

Emergency Prohibition Orders, Section 43

When the council is satisfied that a Category 1 hazard exists on any residential premises and is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers of those or any other residential premises and no Management Order is in force under Chapter 1 or 2 of Part 4 of the Act, action may be taken by the Authority in respect of one or more Category 1 hazards on the same premises or in the same building containing one or more flats. The order specifies prohibition(s) on the use of part or all of the premises with immediate effect.

This is likely where the imminent risk of serious harm cannot be adequately addressed by emergency remedial action for whatever reason. Where this action is taken the council will, if necessary, take all reasonable steps to help the occupants find other accommodation when the tenants are not able to make their own arrangements.

Demolition Order, Section 46 (Housing Act 2004), Part 9 (Housing Act 1985)

When the council is satisfied that a Category 1 hazard exists in a dwelling or HMO which is not a flat, and a Management Order is not in force, or in the case of a building containing one or more flats where the council is satisfied that a Category 1 hazard exists in one or more or the flats contained in the building or in any common parts of the building, and the circumstances of the case are circumstances specified or described in an Order made by the Secretary of State. At the time of writing this policy, no such order has been made.

Clearance Areas, Section 47 (Housing Act 2004), Part 9 (Housing Act 1985)

This may be declared when the council is satisfied that each of the residential buildings in the area contains a Category 1 hazard and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area, or when the council is satisfied that the residential buildings in an area are dangerous or harmful to the health or safety of the inhabitants of the area as a result of their bad arrangement or the narrowness or bad arrangement of the street and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.

Statement of Reasons, Section 8

All Notices and Orders will have a Statement of Reason attached to them as appropriate. The Statement should include why one type of enforcement was taken over another. A copy of the Statement must accompany the Notice or Order. Before formal enforcement action is taken regarding a fire hazard in a House of Multiple Occupation, the council will give regard to the memorandum of understanding as agreed with Cambridgeshire Fire & Rescue Service.

Vacated Premises

In cases where properties are subject to a statutory notice and the property is subsequently vacated, all Notices or Orders will be reviewed to consider whether the notices or orders may be varied, suspended, or revoked. The council will seek to deter landlords from undertaking retaliatory eviction and will not consider the removal of tenants a method of achieving compliance with any Notice served, except in overcrowding situations where it was a specific requirement of the notice.

Charging for Notices and Recovery of Costs

Local Authorities can make a charge as a means of recovering reasonable expenses incurred, in accordance with Sections 49 and 50 of the Housing Act 2004, in:

- serving an Improvement Notice (including suspended),
- making a Prohibition Order (including suspended),
- serving a Hazard Awareness Notice,
- taking Emergency Remedial Action,
- making an Emergency Prohibition Order, or
- making a Demolition Order under the Housing Act 2004

In Fenland, the
cost for a Housing Act Notice is calculated using an hourly rate charge as published within the council's fees and charges statement with can be located on the council website. In cases where chargeable notices and orders are served, the officer will place a registered charge on the Land Registry deeds, which will remain until the debt has been paid, or the property is sold.

Costs will only be waived in exceptional circumstances, and this decision is at the discretion of the Council

When enforcement costs exceed £500 (as a result of multiple notices having been served), the council will normally exercise its rights and remedies under the Law of Property Act 1925 (c.20) which includes, by deed, having powers of sale and lease or accepting surrenders of leases and of appointing a receiver to recover costs.

When enforcement costs do not exceed £500, the council will seek to recover enforcement costs through the small claims court and will use court remedies such as the use of the court bailiff to recover enforcement costs.

The council will make a charge to cover the cost of carrying out a review of Suspended Improvement Notices or Suspended Prohibition Orders, and for serving a copy of the council's decision on a review and that charge will also be registered as a charge against the property.

Works in Default of a Statutory Notice

The council will consider undertaking Works in Default of a statutory notice, either with or without agreement, subject to the following conditions:

- The person responsible for undertaking the works has not complied with the enforcement notice to which the works relate,
- that reasonable progress is not being made towards compliance with the notice in relation to the hazard.

In most cases the council will seek to recover the costs incurred in undertaking works in default by placing a registered charge on the Land Registry deeds, until the debt has been paid. Where a debt is not paid, the council will use its legal powers to recover such debt, or the debt will be repaid at the point of sale

Powers of entry and power to require information

Councils have the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that the officer has:

- written authority from an appropriate officer stating the particular purpose for which entry is authorised, and
- given 24 hours' notice to the owner (if known) and the occupier (if any) of the premises they intend to enter

No notice is required where entry is to ascertain whether an offence has been committed under:

- sections 72 (offences in relation to licensing of HMOs),
- 95 (offences in relation to licensing of houses), or
- 234(3) (offences in relation to HMO management regulations)

If admission is refused, premises are unoccupied, or any prior warning of entry is likely to defeat the purpose of the entry then a warrant may be granted by a Justice of the Peace upon written application. A warrant under this section includes power to enter by force, if necessary.

Councils also have powers under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004, and
- investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004

Councils also have powers under Section 237 of the Housing Act 2004 to use the information obtained pursuant of s.235 and from the Housing Benefit and Council Tax database held by the council to carry out its functions in relation to these parts of the Act.

Empty Homes Legislation

Not only are empty homes a wasted resource, particularly when considered against the need for housing, these long-term vacant dwellings can have an adverse impact on the local community. Some of these effects include community safety issues (e.g., anti-social behaviour and vandalism), unsightliness, environmental issues (e.g., pest and vermin infestations) and reducing the value and ease of sale of neighbouring properties. By bringing empty properties back into use, the following can be achieved:

- Maximise the existing housing resource
- Increase the provision of good quality, affordable housing
- Minimise adverse environmental, social, and local impacts
- Encourage growth, betterment, and investment within communities
- Support other corporate priorities, objectives, and strategies

The Council currently employs an Empty Homes Officer, who focuses on properties which have laid empty the longest. The officer works informally with owners, some of whom have inherited an empty home, and provides a bespoke supportive service, in order to bring the property back into use at the earliest opportunity. Whilst enforcement action, such as Empty Dwelling Management Orders, and Enforced Sales, are legislative tools available to the council, such enforcement action will only be used as a last resort. On-Statutory Inspection Charges.

Non Statutory Inspections

The Private Sector Housing team will charge for non-statutory inspections. These include inspections relating to fitness of dwellings for immigration purposes and stakeholder requests for advice in relation to their duties under the Housing Act 2004. The cost for this service will be charged in accordance with the council's fees and charges statement. The hourly rate includes salary and associated corporate support costs.

Right to Rent Legislation

Under the Right to Rent, introduced in the Immigration Act 2014, private landlords, including those who sub-let or take in lodgers, must ensure tenants have the appropriate legal status to reside and work in the UK before offering accommodation.

The Housing and Planning Act 2016

Civil Penalties

The Housing & Planning Act 2016 introduced a range of measures to crack down on rogue landlords, including the power for Councils to issue Civil Penalties of up to £30,000 as an alternative to prosecution, for certain specified offences.

This power came into force on 6 April 2017 and was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

Income received from a Civil Penalty can be retained by the local housing authority, provided that it is used to support the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

A civil penalty may be imposed as an alternative to prosecution for the following offences under the Housing Act 2004:

- failure to comply with an Improvement Notice (section 30),
- offences in relation to licensing of Houses in Multiple Occupation (section 72),
- offences in relation to licensing of houses under Part 3 of the Act (section 95),
- offences of contravention of an overcrowding notice (section 139), and
- failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

Only one penalty can be imposed in respect of the same offence and a civil penalty can only be imposed as an alternative to prosecution. However, a civil penalty can be issued as an alternative to prosecution for each separate breach of the House in Multiple Occupation management regulations. Section 234(3) of the Housing Act 2004 provides that a person commits an offence if he fails to comply with a regulation. Therefore, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction.

In order to achieve a conviction in the magistrates' court, the Council must be able to demonstrate, beyond reasonable doubt, that an offence has been committed. Therefore, in doing this, Officers will follow the Corporate Enforcement Policy and the Code of Practice for Crown prosecutors.

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out:

- the amount of the proposed financial penalty,
- the reasons for proposing to impose the penalty, and
- information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing.

A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from when the notice was served.

Where written representations are made, a senior officer, not previously involved with the case, will consider the appeal. This officer will take into account any mitigating factors provided by the appellant, including financial declarations. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- withdraw a notice of intent or final notice,
- reduce the amount specified in a notice of intent or final notice, or
- uphold the original decision to issue the notice of intent

At the end of the 28-day period, the Council will decide whether to impose a penalty and, if so, will set the amount of the penalty. If the decision is made to impose a financial penalty, the council will give the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the amount of the financial penalty,
- the reasons for imposing the penalty,
- information about how to pay the penalty,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

A person who receives a final notice may appeal, within 28 days to the First-tier Tribunal (Property Chamber) against:

- the decision to impose a penalty, or
- the amount of the penalty

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

Determining the level of any penalty is detailed later, in the Penalty Structure Chapter.

See Appendix 2 for a flow chart of the Civil Penalty enforcement process.

Prosecution versus Civil Penalty Notice

The decision to impose a Civil Penalty as opposed to pursuing a traditional prosecution will be determined on a case-by-case basis.

Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean civil penalties should not be used in cases where serious offences have been committed. A civil penalty of up to £30,000 can be imposed where a serious offence has been committed and a local housing authority may decide that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and

effective sanction in a particular case.

Where a local housing authority decides to prosecute when a landlord has committed breaches in more than one local housing authority area, it should consider the scope for working together with other local housing authorities.

The following principles will apply to each case to be considered:

- each case will be considered on its own merits and any known mitigating and aggravating circumstances will be considered
- there must be sufficient, reliable evidence to justify the action taken
- the action taken must be in the public interest
- decisions to take enforcement action should always be fair and consistent

Electrical Safety Standards

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 enables councils to serve financial penalties for breaches of up to £30,000 and came into full force on 1st April 2021.

These new regulations require landlords to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at an interval of at least every 5 years. Landlords must provide a copy of the electrical safety report to their tenants, and to their local authority if requested. Landlords of privately rented accommodation must:

- ensure national standards for electrical safety are met. These are set out in the latest edition of the 'Wiring Regulations,' which are published as British Standard 7671,
- ensure the electrical installations in their rented properties are inspected and tested by a qualified and competent person at an interval of at least every 5 years,
- obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test,
- supply a copy of this report to the existing tenant within 28 days of the inspection and test,
- supply a copy of this report to a new tenant before they occupy the premises,
- supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report,
- supply the local authority with a copy of this report within 7 days of receiving a request for a copy,
- retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test,
- where the report shows that remedial or further investigative work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report, and
- supply written confirmation of the completion of the remedial works from the electrician to the tenant and the local authority within 28 days of completion of the works

The council may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of a breach. Each breach constitutes a separate offence for

which a financial penalty can be imposed.

The same criminal standard of proof is required for a financial penalty as for prosecution. Therefore, the Council must be able to demonstrate, beyond reasonable doubt, that the offence has been committed. Therefore, in doing this, Officers will follow the Corporate Enforcement Policy and the Code of Practice for Crown prosecutors.

Determining the level of any penalty is discussed later, in the Penalty Structure Chapter.

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out:

- the amount of the proposed financial penalty,
- the reasons for proposing to impose the penalty, and
- information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when deciding the level of fine.

A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from the date when the notice was given.

A senior officer, not previously involved, will consider the case after the 28 days. This will usually be the Head of Housing and Community Support or another relevant officer at least at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- withdraw a notice of intent or final notice,
- reduce the amount specified in a notice of intent or final notice, or
- uphold the original decision to issue the notice of intent

If the decision is made to impose a financial penalty, we will give the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the amount of the financial penalty,
- the reasons for imposing the penalty,
- information about how to pay the penalty,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

A person who receives a final notice may appeal, within 28 days to the First-tier Tribunal (Property Chamber) against:

- the decision to impose a penalty, or

- the amount of the penalty

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

See the Appendix 3 for a flow chart of the Financial Penalty enforcement process.

Determining Penalties

In accordance with statutory guidance, the Council will consider the following factors to help ensure that any penalty is set at an appropriate level:

- **Severity of the offence**. The more serious the offence, the higher the penalty should be
- **Culpability and track record of the offender**. A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations
- **The harm caused to the tenant**. This is an important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty
- **Punishment of the offender**. A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities
- **Deter the offender from repeating the offence**. The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence
- **Deter others from committing similar offences**. While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that:
    - the local housing authority is proactive in levying civil penalties where the need to do so exists, and
    - that the penalty will be set at a high enough level to both punish the offender and deter repeat offending
- **Remove any financial benefit the offender may have obtained as a result of committing the offence**. The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e., it should not be cheaper to offend than to ensure a property is well maintained and properly managed
- **Fairness and proportionality.** The final determination of any civil penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. Factors to consider include:

- Totality principle. If issuing a civil penalty for more than one breach, or where the agent has already been issued with a penalty, consider whether the total civil penalties are just and proportionate to the breaches.
- Impact of the civil penalty on the agent's ability to comply with the law and whether it is proportionate to their means.
- Impact of the civil penalty on the business – if the fine would be disproportionate to the turnover/scale of the business or would lead to the agent going out of business.

Penalty Structures

Although the Council has a wide discretion in determining the appropriate level of financial penalty on a case-by-case basis, regards has been given to statutory guidance when producing this policy.

Civil Penalties issued under the Housing Act 2004 and Financial Penalties in relation to The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 have a maximum penalty amount of £30,000.

When issuing penalties, The Council has decided to base the fine structure in line with the principles contained in, Sentencing Council Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline. The Council believes this to be a fair, relevant, and reasonable model to follow.

Where a penalty is to be imposed, the following seven steps below shall be used to determine the level of the fine

Step One - A decision shall first be made by considering the culpability factors:

LEVEL	DESCRIPTION	EXAMPLES
Maximum	Where the landlord or agent has intentionally and seriously breached, or seriously and flagrantly disregarded, the law and knew their actions were unlawful	**The Housing Act 2004** • Failure to demonstrate compliance or shows a willful refusal to comply with an Improvement Notice where defects are clearly dangerous to the occupants • Breach of a Banning Order • Willful refusal to comply with an overcrowding notice • Failure to comply with HMO management regulations where the conditions are clearly visible as dangerous to the tenants or where a landlord/agent has not made appropriate inspections of the property **The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020** • Failure to ensure national standards for electrical safety are met. These are set out in the latest edition of the 'Wiring Regulations,' which are published as British Standard 7671 • Failure to carry out further investigative or

		remedial work or completing this work within 28 days or any shorter period if specified as necessary in the EICR
Very High	Where the landlord or agent has seriously breached, or seriously and flagrantly disregarded, the law.	**The Housing Act 2004** • Failure to licence an HMO • Failure to demonstrate compliance or shows a willful refusal to comply with an Improvement Notice • Failure to comply with an overcrowding notice within the date required • Failure to comply with HMO management regulations **The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020** • Failure to ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every 5 years • Failure to supply the local housing authority with an EICR within 7 days of receiving a written request for a copy where the report is unsatisfactory. • Failure to supply a copy of an EICR to the existing tenant(s) within 28 days of the inspection and test where report is unsatisfactory
High	Actual foresight of, or willful blindness to, risk of a breach but nevertheless taken	**The Housing Act 2004** • Demonstrated actions to resolve the hazards highlighted on an Improvement Notice, but the majority of work has not been completed by the date specified on the notice **The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020** • Failure to obtain an EICR from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test • Failure to supply a copy of an EICR to a new tenant before they occupy the premises • Failure to supply a copy of an EICR to any prospective tenant within 28 days of receiving a request for the report
Medium	Breach committed through an act or omission which a person exercising reasonable care would not commit	**The Housing Act 2004** • Demonstrated actions to resolve the hazards highlighted on an Improvement Notice, but less than half the work required has been completed by the date specified on the notice **The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020**

		• Failure to supply the local housing authority with a copy of an EICR within 7 days of receiving a written request for a copy where report is satisfactory • Failure to supply a copy of an EICR to the existing tenant within 28 days of the inspection and test, where the report is satisfactory
Low	Breach committed with little fault as significant efforts were made to address the risk although they were inadequate on the relevant occasion	**The Housing Act 2004** • The majority of the work required on an Improvement Notice has been completed by the date specified but remedial work is still required before completion **The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020** • Failure to supply written confirmation of the completion of the further investigative or remedial works from the electrician to the tenant and the local housing authority within 28 days of completion of the works
Minimum	Breach was committed with little fault because there was no warning or circumstance indicating a risk, or that the failings were minor and occurred as an isolated incident	**The Housing Act 2004** • Failure to provide documentation to prove works on an Improvement Notice have been completed satisfactorily **The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020** • Failure to retain a copy of an EICR to give to the inspector and tester who will undertake the next inspection and test

Step 2 - the harm factors should be considered and rated from the table below. Consideration should be given to the likelihood of actual harm occurring due to the breach, and the severity of that harm. Where the breach of legislation is through the breach of a Banning Order the level of harm shall be considered on a case-by-case basis.

RATING	EXPLANATION	EXAMPLES
High	Serious adverse effect on individual or high risk of adverse effect	**The Housing Act 2004** • Category 1 Hazards (A-C) **The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020** • Multiple C1 rating on EICR
Medium	Adverse effects, lesser than above. Medium risk of adverse effect, or low risk but of serious effect. Tenant seriously misled.	**The Housing Act 2004** • High Category 2 Hazards (D-E) **The Electrical Safety Standards in the Private Rented Sector (England)**

		Regulations 2020 • C1 Rating on EICR
Low	Low risk of an adverse effect.	**The Housing Act 2004** • Low Category 2 Hazards (F-J) **The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020** • C2 Rating(s) on EICR
Negligible	Harm not a consideration in the breach	**The Housing Act 2004** • Failure to licence an HMO **The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020** • Absence of an EICR • F1 Rating on EICR

Step Three – The culpability and harm are used as references and converted using the table below to provide a point scale within the range of the civil penalty.

	CLASS OF HARM			
CULPABILITY	HIGH	MEDIUM	LOW	NEGLIGIBLE
MAXIMUM	9	8	7	6
VERY HIGH	8	7	6	5
HIGH	7	6	5	4
MEDIUM	6	5	4	3
LOW	5	4	3	2
MIMIMUM	4	3	2	1

Step 4 - The scale point is then used to provide the penalty banding as below.

1. £1-£500
2. £501-£1,000
3. £1,001-£3,000
4. £3,001-£7,000
5. £7,001-£11,000
6. £11,001-£15,000
7. £15,001-£20,000
8. £20,001-£25,000
9. £25,001-£30,000

Step 5 - A starting point shall be set for the fine that shall be the mid-way point of each penalty banding.

1. £250
2. £750
3. £2,000

4. £5,000
5. £9,000
6. £13,000
7. £17,500
8. £22,500
9. £27,500

Step 6 - Factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment within the banding. Not all factors will be considered at this stage as not all will be apparent until the defendant has had their opportunity to provide their representation in defense of the breaches. Factors to be considered are included in Appendix 1.

Step 7 – Fairness and proportionality shall be considered after the period to receive representations so that an informed decision can be made.

Rent Repayment Orders

A Rent Repayment Order (RRO) is defined in section 40(2) of the Housing and Planning Act 2016 as an order requiring the landlord under a tenancy of housing to:

- repay an amount of rent paid by a tenant, or
- pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy

The reference to universal credit or a relevant award of universal credit includes housing benefit under Part 7 of the Social Security Contributions and Benefits Act 1992 pending its abolition. The Council as the local housing authority has a duty under section 48 of the Housing and Planning Act 2016 to consider applying to the First-tier Tribunal ('the Tribunal') for a Rent Repayment Order in cases where an offence from the list below has been committed.

Offences for which a Rent Repayment Order can be obtained:

- Failure to comply with an Improvement Notice, contrary to section 30(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Failure to comply with a Prohibition Order etc., contrary to section 32(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Being a person having control of or managing a house in multiple occupation (HMO) which is required to be licensed under Part 2 of the Housing Act 2004, but which is not so licensed, contrary to section 72(1) ofthe Housing Act 2004
- Being a person having control of or managing a house which is required to be licensed under Part 3 of the Housing Act 2004 but is not so licensed, contrary to section 95(1) of the Housing Act 2004 Using violence tosecure entry to a property, contrary to Section 6(1) of the Criminal LawAct 1977
- Illegal eviction or harassment of the occupiers of a property, contrary to section 1(2), (3) or (3A) of the Protection from Eviction Act 1977
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016 (not yet in force but scheduled to be 1 October 2017)

The offences under the Housing Act 2004 must relate to hazards within occupied premises and not common parts only. The offence must have been committed on or after 6th April 2017. A RRO can be applied for whether the landlord has been convicted or not.

Where there has been a conviction, a certificate of conviction will suffice to establish commission of the specified offence. In the absence of a conviction, the Tribunal will need to be satisfied, beyond reasonable doubt, that the landlord committed the specified offence. Officers shall have regard to the Crown Prosecution Service Code for Crown Prosecutors (see Code for Crown Prosecutors) in order to establish whether there is likely to be sufficient evidence to secure a conviction and therefore to establish the necessary burden of proof to the Tribunal.

In deciding whether to apply for a RRO, the Council must under section 41(4) of the Act have regard to any guidance issued by the Secretary of State (see the DCLG document 'Rent Repayment orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities' - Rent Repayment Orders Guidance).

Council officers may offer advice to tenants who are eligible to claim a RRO in respect of rent paid themselves but, in such cases, the tenant will usually be referred direct to the Citizen's Advice Bureau or other appropriate bodies for further support.

Council officers are granted powers and duties to deliver proportionate and targeted enforcement. It is vital that regulatory resource is used consistently and to best effect by ensuring that resources are targeted on addressing the highest risks. The use of RRO's is only to be used where considered appropriate.

The objective of an application for a Rent Repayment Order is not only to issue a punishment because of non-compliance with the law, but also to deter the offender and others in a similar position from repeat offences.

If a conviction for the offence has been obtained then it is normally expected that a Rent Repayment Order will be pursued where the Council have paid housing benefit, or the housing element of Universal Credit. The Tribunal must, in these cases, order that the maximum amount (12 months) of rent be repaid in these circumstances.

The matrix below should be followed to help determine whether to pursue a RRO and the amount of rent to reclaim:

1.	Has the offender been prosecuted and convicted of a relevant offence in Court?	If yes, make an RRO application. If no go to step 2
2.	Has evidence been obtained from Academy / Benefits to confirm that Housing Benefit has been paid by FDC over the 12 months?	If no – no case for RRO. If yes, proceed to step 3
3.	Does the LA have sufficient evidence to prove 'beyond reasonable doubt' that a relevant offence has been committed? Is the evidence reliable? Is there no credible defense?	If no – case closed, do not pursue. If yes, proceed to step 4
4.	Is it in the public interest to proceed to apply for an RRO? (Consider the level of harm that has been caused)	If no – case closed, do not pursue. If yes, proceed to step 5
5.	Is pursuing an RRO proportionate to the offence?	If no – case closed, do not pursue. If yes, proceed to step 6
6.	Does the offender have any previous convictions?	If yes – proceed to RRO. If

		no, proceed to step 7
7.	Where no previous offence – is the issuing of a RRO likely to deter from future offences?	If yes – proceed to RRO. If no, consider closing and not pursuing
8.	Would the issuing of a RRO cause substantial hardshipto the offender, and are there mitigating circumstances to suggest the LA should not proceed?	If yes, complete notes to justify reason not to pursue. If no, proceed to RRO application
9.	Are there any other factors that would indicate the Council should not proceed with the issuing of the RRO?	If yes, complete notes to justify reason not to pursue. If no, proceed to RRO application

If the conclusion is yes to pursue RRO, then the amount to be reclaimed should be determined by considering the factors in the table below.

If the offender has already been convicted of the offence, then the amount shall automatically be determined as 12 months rental income.

If no conviction has been obtained, but the decision has been made to pursue RRO, the factors in the table below should be considered to determine a sum.

The amount of rent to be repaid cannot exceed the actual amount collected. Where the tenant is in receipt of Universal Credit, the formula provided in the DCLG guidance in relation to RROs shall be followed.

Factors to influence amount of RRO:

1.	Punishment of the offender – the RRO should have a real economic impact on the offender and demonstrate consequences of non-compliance with their responsibilities. Consider the conduct of landlord and tenant, financial circumstances of landlord and whether landlord has previous convictions
2.	Deter the offender from repeating the offence – level of RRO must be high enough to deter offender from repeating
3.	Dissuade others from committing similar offences – RRO will be in the public domain. Robust and proportionate use is likely to help others comply with their responsibilities.
4.	Remove any financial benefits that the offender may have obtained resulting from the offence – landlord should be losing the benefits that he has accrued whilst not complying with their responsibilities
5.	Are there any other factors the Council considers should be considered?

Consideration of the above points will determine whether the full amount of rent should be reclaimed or if there are mitigating circumstances, this will depend on the severity of the offence and whether this justifies 12 months of non-payment of rent.

If there are mitigating circumstances, then a deduction should be applied from the full 12 months. The amount payable under a RRO is recoverable as a debt.

Banning Order Offences

The local Authority may apply to the First-tier Tribunal for a Banning Order against a landlord who it has prosecuted for a banning order offence as described in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.

A banning order is an order issued by the First-tier Property Tribunal that bans a landlord from:

- letting housing in England,
- engaging in English letting agency work,
- engaging in English property management work, or
- doing two or more of those things

Breach of a banning order is a criminal offence.

Determining the sanction

Local housing authorities are expected to develop and document their own policy on when to pursue a banning order and should decide which option it wishes to pursue on a case-by-case basis in line with that policy. FDC will pursue a banning order for the most serious offenders where more than one Banning Order Offence has been committed.

The government has issued guidance which details the specific process for making a Banning Order. Fenland District Council will adopt this guidance: Banning orders for landlords and property agents under the Housing and Planning Act 2016 (publishing.service.gov.uk) or any future amended guidance from the government.

Database of Rogue Landlords and Property Agents

The database is a tool for local housing authorities in England to keep track of rogue landlords and property agents. Users will be able to view all entries on the database, including those made by other local housing authorities. The database can be searched to help keep track of known rogues, especially those operating across council boundaries and will help authorities target their enforcement activities.

If a court makes a banning order, then Fenland District Council must make an entry in the database of rogue landlords and property agents. An entry may also be made if a person is convicted of a banning order offence committed at the time, they are a residential landlord or property agent, or if two financial penalties have been imposed on a person for such an offence in a 12-month period. The government has published statutory guidance regarding this database.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697637/Database_of_rogue_landlords_statutory_guidance.pdf

Licensing of Houses in Multiple Occupation

Under the Housing Act 2004 certain types of Houses in Multiple Occupation (HMO) will require a license to operate. A licensable HMO is a building occupied by more than two households as defined in Part 2 of the Housing Act 2004.

This legislation has subsequently been amended, and since October 2018, any HMO which is occupied by 5 persons or more, must be licensed, irrespective of the number of storeys.

The cost of a licence will be charged in accordance with the council's fees and charges statement which can be found on our website.

All HMO's which fall under the definition of s.254 of the Housing Act 2004, irrespective as to whether they require a licence, must comply with The Management of Houses in Multiple Occupation (England) Regulations 2006.

Following licensing, HMOs will be prioritised for assessment under the HHSRS. The owner must deal with all Category 1 hazards within a suitable timescale. If they do not, then the council will use their enforcement powers to improve the property. Applicants will be informed of this requirement when the licence is issued, and information made available to help them identify and deal with Category 1 Hazards.

The council will consider issuing a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make an HMO non-licensable. A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. Where a licensable HMO is not licensed, the landlord cannot serve notice to quit upon tenants until the HMO is licensed.

Where a landlord fails to licence a HMO, the council may consider instigating a criminal prosecution or to serve a Civil Penalty.

Where there is no prospect of an HMO being licensed, the act requires that the council use its interim management powers. This enables the council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended to five years, with the council also having the power to grant tenancies.

If the council finds that there has been a change of circumstances in an HMO since it was licensed, it has the power to vary the licence. If there is a serious breach or are repeated breaches of the license conditions or the licensee or manager are no longer fit and proper persons, the licence can be revoked.

The licence can also be revoked if the property is no longer a licensable HMO or if the condition of the property means it would not be licensable were an application to be made at the later time.

Management Orders

Management Orders effectively mean that the council (or its Agent) takes over the running of the property as if it were the landlord, including collecting rents, creating tenancies, carrying out repairs and other management matters; the duties vary between the different orders that can be made. This does not affect the ownership of the property; the owner retains certain rights depending on the type of order including receipt of surplus rental income. Relevant costs are recoverable.

There are two forms of management order: an interim MO which last for a maximum of 12 months, and a final MO which can last for up to 5 years.

Where a property is subject to licensing but there are no reasonable prospects of it being licensed in the near future or a management order is necessary to protect the health, safety and welfare of persons affected by the condition of the property, the council must make a MO. A threat to evict persons occupying a house to avoid licensing may be regarded as a threat to the welfare of those persons. There are other prescribed circumstances which require the council to make a MO.

The council may apply to a RPT for a MO for an HMO not subject to licensing where it is considered necessary to protect the health, safety and welfare of persons affected by the conditions.

A Final Management Order (FMO) lasts for no longer than 5 years and must be made on expiry of the IMO where a licence cannot be granted. When a FMO expires a new one may be made if necessary.

A Special Interim Management Order (SIMO) is an Order authorised after a successful application to a First-tier Tribunal where circumstances fall within a category of circumstances prescribed by the national authority, and it is necessary to protect the health, safety and welfare of occupants, visitors, or neighbours. A FMO can follow a SIMO to protect persons on a long-term basis as described in the Order.

An Interim Empty Dwelling Management Order (interim EDMO) is an Order authorised after a successful application to a First-tier Tribunal. The dwelling must have been wholly unoccupied for at least two years and there is no reasonable prospect that the dwelling will become occupied in the near future. An interim EDMO enables the council to take steps to ensure, with the consent of the proprietor, an empty dwelling becomes occupied. An interim EDMO lasts no longer than 12 months.

A Final Empty Dwelling Management Order (Final EDMO) may replace an Interim EDMO if the council feels that unless a Final EDMO is in place the dwelling will become or remain empty. Where the dwelling is already unoccupied the council must have taken all appropriate steps under the interim EDMO with a view to ensuring the dwelling becomes occupied. A final EDMO lasts for 7 years; once a Final EDMO expires a new one may be made if necessary. Orders can be varied or revoked in accordance with the provisions of Part 4 of the Act.

The council is under a duty to issue Interim and Final Management Orders where necessary. Officers will instigate this action where necessary but as a last resort.

The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

As of the 1st of April 2019, the Tenant Fees Act 2019 amended the Housing and Planning Act 2016 and made it a requirement that property agents in the private rented sector holding client money obtain membership from a government approved or designated client money protection scheme.
The purpose was to give landlords and tenants confidence that their money is safe when handled by agents. The Client Money Protection (CMP) schemes enable landlords and tenants alike to be compensated if their money is not repaid.
In addition, there is also the requirement to be transparent. This requires:

- a letting agent must display its membership certificate at each of its premises in a place where it will be clearly visible to clients
- publish a copy of the certificate on their website where applicable
- produce a copy of the certificate to any person who may reasonably require it, free of charge
- a regulated property agent must notify all of its clients within 14 days should a CMP scheme membership be revoked
- a regulated property agent must notify all of its clients within 14 days should it change membership schemes and provide the name and address of the new scheme

Breaches of the requirement to belong to a scheme are liable to a financial penalty to a maximum of £30,000 (Regulation 3). Transparency requirements are liable to a maximum of £5,000 (Regulation 4).

Fenland District Council may also impose a penalty on an agent in another district. Should this be the case then Fenland District Council must inform the other local authority of its intention to do so. The other local authority then has no duty or capacity to enforce the regulations in relation to this breach.

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out:

- the amount of the proposed financial penalty,
- the reasons for proposing to impose the penalty, and
- information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has evidenced a breach, or at any time when the conduct is continuing.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from the date when the notice was given.

A senior officer, not previously involved in the case, will consider the case after the 28 days. This will usually be the Head of Housing and Community Support or another relevant officer at least at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- decide whether to impose a financial penalty on the property agent,
- if it is decided to do so, decide the amount of the penalty, or
- withdraw a penalty

If the decision is made to impose a financial penalty, we will give the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the amount of the financial penalty,
- the reasons for imposing the penalty,
- information about how to pay the penalty,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

A person who receives a final notice may appeal, within 28 days to the First-tier Tribunal (Property Chamber) against:

- the decision to impose a penalty, or
- the amount of the penalty

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn. Appeals can be made to the First-tier Tribunal against:

- the decision to impose a penalty, or
- the amount of the penalty

Fenland District Council may at any time withdraw a notice of intent or final notice; or reduce the amount specified in a notice of intent or final notice.

Any financial penalties received by the council may be used to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.

Determining Penalties

In accordance with statutory guidance, the Council will consider the following factors to help ensure that any penalty is set at an appropriate level:

- **Severity of the breach** - the more serious the breach, the higher the penalty should be. This should include considering:
    - The track record of the agent – a higher penalty will be appropriate where the agent has a history of failing to comply with their obligations and/or their

actions were deliberate, and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Agents are running a business and should be expected to be aware of their legal obligations; and
    - Harm caused to the tenant or landlord – the greater the harm, the greater the amount should be when imposing a financial penalty.

- **Deterring agents from breaching the Requirement Regulations 2019** - Breaching the legal requirements of mandatory client money protection is not a criminal offence therefore agents cannot be prosecuted for non-compliance. In light of this while the financial penalty should be proportionate and reflect both the severity of the breach and previous track record of the agent, it is important that it is set at a high enough level to ensure that it has a real economic impact on the agent and demonstrates the consequences of not complying with legal obligations. This should include considering:

    - Deterring the agent from repeating the breach.
    - Deterring others from committing similar breach, and
    - Removing any financial benefit, the agent may have obtained because of committing the breach.

- **Aggravating and mitigating factors -** In order to determine the financial penalty, the enforcement authority should consider whether there are any aggravating factors and/or mitigating factors in each case.

- **Fairness and proportionality.** The final determination of any financial penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. Factors to consider include:

    - Totality principle. If issuing a financial penalty for more than one breach, or where the agent has already been issued with a penalty, consider whether the total financial penalties are just and proportionate to the breaches.
    - Impact of the financial penalty on the agent's ability to comply with the law and whether it is proportionate to their means.
    - Impact of the financial penalty on the business – if the fine would be disproportionate to the turnover/scale of the business or would lead to the agent going out of business.

A record of each decision and the reason for determining the financial penalty must be made by the enforcement authority.

Penalty Structures

Although the Council has a wide discretion in determining the appropriate level of financial penalty on a case-by-case basis, regards has been given to statutory guidance when producing this policy.

Financial Penalties issued under The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 have a maximum penalty amount of £30,000 for the breach of the requirement to belong to a client money protection scheme (Regulation 3) and a maximum of £5,000 for breaching the transparency requirements (Regulation 4).

When issuing penalties, The Council has based the fine structure in line with the lead authority and the national approach to promote consistency, alongside local priorities.

Where a penalty is to be imposed, the following seven steps below shall be used to determine the level of the fine

Step One - A decision shall first be made by considering the culpability factors:

LEVEL	DESCRIPTION
Maximum	Where the landlord or agent has intentionally and seriously breached, or seriously and flagrantly disregarded, the law and knew their actions were unlawful
Very High	Where the landlord or agent has seriously breached, or seriously and flagrantly disregarded, the law.
High	Actual foresight of, or willful blindness to, risk of a breach but nevertheless taken
Medium	Breach committed through an act or omission which a person exercising reasonable care would not commit
Low	Breach committed with little fault as significant efforts were made to address the risk although they were inadequate on the relevant occasion
Minimum	Breach was committed with little fault because there was no warning or circumstance indicating a risk, or that the failings were minor and occurred as an isolated incident

Step 2 - the harm factors should be considered and rated from the table below. Consideration should be given to the likelihood of actual harm, occurring due to the breach, and the severity of that harm.

RATING	EXPLANATION
High	**High likelihood of harm** • Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business, or • High risk of an adverse effect on individual(s) – including where persons are vulnerable
Medium	**Medium likelihood of harm** • Adverse effect on individual(s) (not amounting to Category 1) • Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect. • Tenants and/or legitimate landlords or agents substantially undermined by the conduct. • The Council's work as a regulator is inhibited • Tenant or prospective tenant misled
Low	**Low likelihood of harm** • Low risk of an adverse effect on actual or prospective tenants. • Public misled but little or no risk of actual adverse effect on individual(s)
Negligible	**Negligible likelihood of harm** • Harm not a consideration in the breach

Step Three – The culpability and harm are used as references and converted using the

table below to provide a point scale within the range of the financial penalty.

	CLASS OF HARM			
CULPABILITY	HIGH	MEDIUM	LOW	NEGLIGIBLE
MAXIMUM	9	8	7	6
VERY HIGH	8	7	6	5
HIGH	7	6	5	4
MEDIUM	6	5	4	3
LOW	5	4	3	2
MIMIMUM	4	3	2	1

Step 4 - The scale point is then used to provide the penalty banding as below for breaches of the transparency requirements (Regulation 4).

1. £1-£83
2. £84-£166
3. £167-£500
4. £501-£1,166
5. £1,167-£1,833
6. £1,834-£2,500
7. £2,501-£3,333
8. £3,334-£4,166
9. £4,167-£5,000

And from the following list for the breach of the requirement to belong to a client money protection scheme (Regulation 3)

1. £1-£500
2. £501-£1,000
3. £1,001-£3,000
4. £3,001-£7,000
5. £7,001-£11,000
6. £11,001-£15,000
7. £15,001-£20,000
8. £20,001-£25,000
9. £25,001-£30,000

Step 5 - A starting point shall be set for the fine that shall be the mid-way point of each penalty banding. As below for breaches of transparency requirements.

1. £42
2. £125
3. £333
4. £833
5. £1,500
6. £2,167
7. £2,917
8. £3,750
9. £4,583

And from the following list for the breach of the requirement to belong to a client money protection scheme.

1. £250
2. £750
3. £2,000
4. £5,000
5. £9,000
6. £13,000
7. £17,500
8. £22,500
9. £27,500

Step 6 - Factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment within the banding. Not all factors will be considered at this stage as not all will be apparent until the defendant has had their opportunity to provide their representation in defense of the breaches. Factors to be considered are included in Appendix 1.

Step 7 – Fairness and proportionality shall be considered after the period to receive representations so that an informed decision can be made.

Energy Act 2011

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007

Cambridgeshire County Council (CCC) has ratified their decision to delegate their enforcement powers of this legislation to all local district authorities within Cambridgeshire as local Private Sector Housing Officers are better placed to engage with landlords and to assess such breaches more effectively. This means that, if upon engagement with a landlord or agent, it is determined there is no Energy Performance Certificate (EPC) then the Council can serve a fixed penalty notice. CCC has confirmed that FDC can keep any income from the fixed penalty notice.

These regulations stipulate the following requirements in relation to Energy Performance Certificates (EPCs) and rented properties:

- The relevant person shall make available free of charge a valid energy performance certificate to any prospective buyer or tenant
    - at the earliest opportunity; and
    - in any event before entering into a contract to sell or rent out the building or, if sooner, no later than whichever is the earlier of— (i) in the case of a person who requests information about the building, the time at which the relevant person first makes available any information in writing about the building to the person; or (ii) in the case of a person who makes a request to view the building, the time at which the person views the building.
- The relevant person must ensure that a valid energy performance certificate has been given free of charge to the person who ultimately becomes the buyer or tenant
- The person giving the particulars must ensure that:
    - the particulars include the asset rating of the building expressed in the way required by regulation 11(1)(a); or

    - a copy of an energy performance certificate for the building is attached to the particulars.
- Where a relevant person is under a duty under regulation 5(2), 5(5) or 9(2) to make available or give an energy performance certificate to any person, the certificate must be accompanied by a recommendation report
- A recommendation report is a report containing recommendations for the improvement of the energy performance of the building issued by the energy assessor who issued the energy performance certificate
- It is the duty of a person subject to such a requirement to produce documents within the period of seven days beginning with the day after that on which it is imposed

Breaches of the above are liable to a Penalty Charge Notice of £200.
Landlords can request a review of any Penalty Charge Notice where they consider they can demonstrate they took all reasonable steps and exercised all due diligence to avoid breaching the duty.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

Where a landlord is unsuccessful with the review, they can appeal the decision to the County Court provided this is within 28 days beginning with the day after the notice was served or a review decision. Appeals can be made on the grounds of:

- that the recipient did not commit the breach of duty specified in the penalty charge notice,
- that the notice was not given within the time allowed by regulation 40(2) or does not comply with any other requirement imposed by these Regulations, or
- that in the circumstances of the case it was inappropriate for the notice to be given to the recipient

See Appendix 4 for a flow chart of the Penalty Charge enforcement process.

The Minimum Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

As of the 1st April 2020 any rental property with an EPC rating below an E, therefore any F or G, is deemed sub-standard, and as such, any landlord that rents property with such a low EPC rating, is in breach of the regulations unless it is included on the PRS exemption register.

Where the council considers a landlord appears to be renting out a property, or to have been at any time within the 12 months preceding shall serve a Compliance Notice requesting:

- the energy performance certificate for the property which was valid at the time the property was let,
- any other energy performance certificate for the property in the landlord's possession,

- any current tenancy agreement under which the property is let,
- any qualifying assessment in relation to the property,
- any other document which the enforcement authority considers necessary to enable it to carry out its functions under this Part, and
- may request landlord to register copies of any of them on the PRS Exemptions Register

The council can choose to serve a Penalty Notice where a landlord:

- rents out a sub-standard property, unless one or more exemptions apply,
- has registered false or misleading information when registering information on the PRS Exemptions Register, or
- does not comply with a compliance notice

Penalties vary dependent on the breach for example maximum fines available are as follows:

- for letting a sub-standard property for less than 3 months - £2,000
- for letting a sub-standard property for 3 months or greater - £4,000
- false or misleading information is provided - £1,000
- failure to comply with a compliance notice - £2,000

Where a landlord violates one of the first two listed breaches above and either, or both of the last two, then the total of the financial penalty must not be greater than £5,000.

Where a financial penalty is imposed the local authority is at liberty to publisise any of the following information onto the PRS exemption Register for a minimum of 12 months:

- landlords name,
- details of the breach of these Regulations in respect of which the penalty notice has been issued,
- the address of the property in relation to which the breach has occurred, and
- the amount of any financial penalty imposed

Penalty Notices will include any actions required to remedy the breach(es).

The level of the penalty shall be calculated by working from a starting point at 75% of the maximum fine and aggravating or mitigating factors (Appendix 1) will be used to increase or reduce that fine accordingly.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

Where a Penalty Notice is served, then a landlord has one month to request a review of the notice. Where a review is requested, the council must:

- consider any representations made by the landlord and all other circumstances of the case,
- confirm or withdraw the penalty notice, and

- serve notice of its decision to the landlord

Where the council:

- ceases to be satisfied that the landlord committed the breach specified in the penalty notice,
- is satisfied that the landlord took all reasonable steps and exercised all due diligence to avoid committing the breach specified in the penalty notice, or
- decides that in the circumstances of the case it was not appropriate for a penalty notice to be served on the landlord,

then the council shall serve a withdrawing of the penalty notice.

If, after a review the Penalty Notice is confirmed, then a landlord can appeal to the First-tier Tribunal on the grounds that:

- the issue of the penalty notice was based on an error of fact,
- the issue of the penalty notice was based on an error of law,
- the penalty notice does not comply with a requirement imposed by these Regulations, or
- in the circumstances of the case, it was inappropriate for the penalty notice to be served on the landlord

Where a landlord fails to take the action required by a penalty notice within the period specified in that penalty notice, the enforcement authority may issue a further penalty notice.

See Appendix 5 for a flow chart of the Penalty Notice enforcement process.

Energy Act 2013

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

These regulations were introduced to ensure that private sector landlords install and maintain at least one smoke alarm on every storey of their rented properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g., a coal fire or wood burning stove).

It also makes it the landlords' responsibility to ensure that the alarms are in working order at the start of each new tenancy. In addition, the regulations amend the conditions which must be included in an HMO licence under Part 2 or 3 of the Housing Act 2004 ("the 2004 Act") in respect of smoke and carbon monoxide alarms.

The enforcement authorities (local authorities) are required to issue a remedial notice where they have reasonable grounds to believe a landlord has not complied with one or more of the requirements of the regulations.

The landlord must comply with the notice within 28 days. If they do not, the local authority must carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met and can issue a penalty charge of up to £5,000. Penalty charges for non-compliance are as follows:

	Maximum	Starting Point
First Offence	£3,000	£1,500
Repeat Offence	£5,000	£4,000

In determining the level of the penalty charge notice the Council has considered the likely costs it will incur, and the amount required sufficient to provide a deterrent to non-compliance. Increasing the fine for a repeat offence reflects the seriousness of the offence and is designed to deter repeat offending. The penalty charge will be started at the amount listed in the table above and then any mitigating factors will be taken into consideration in setting the penalty charge notice amount. Factors to be considered are listed in Appendix 1.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

While these charges are set as standard, a landlord may seek to review a penalty charge notice within 28 days by service of notice on the Council. A senior officer not directly involved in the service of the original notice will carry out this review. The reviewing officer will consider the representations made by the landlord and decide whether to confirm, vary or withdraw the penalty charge notice.

The reviewing officer will have regard to the amount required for the Council to recover its costs and that the Council has considered and agreed a level of fine that it considers is

sufficient to provide a deterrent to non-compliance. After reviewing the penalty charge notice the reviewing officer will inform the landlord by service of noticeof their decision.

The reviewing officer will have regard to the amount required for the Council to recover its costs and that the Council has considered and agreed a level of fine that it considers is sufficient to provide a deterrent to non-compliance. After reviewing the penalty charge notice the reviewing officer will inform the landlord by service of notice of their decision.

The Landlord or Agent can appeal to the Residential Property Tribunal.

See Appendix 6 for a flow chart of the Penalty Charge enforcement process.

Protection from Eviction Act 1977

The above act provides protection to tenants by making it a criminal offence for a landlord to use unreasonable behaviour resulting in making the tenant feel uncomfortable, distressed or ultimately forcing them to leave their home. Some landlords believe they have the right to enter and control the way the tenant lives. However, landlords must be aware that, when they rent a property to a single household, they 'part with possession' of that property and have to conduct their management of the tenancy in line with housing legislation. If a landlord doesn't comply with legislation their actions could be construed as harassment or illegal eviction. Examples of such behaviour could be:

- changing the locks without ending the tenancy via the due legal process
- entering their tenants' home without permission
- using unreasonable behaviour which makes a tenant feel uncomfortable
- preventing tenants from using the basic services, such as water, electric & gas

The above list is not exhaustive, and each case will be assessed on its own merits. Where an officer receives an allegation of harassment or illegal eviction, an investigation will be carried out. If there is sufficient and reliable evidence that an offence may have occurred pursuant of the Protection from Eviction Act the case will be referred to the council's legal department recommending a criminal prosecution. Upon summary conviction, a landlord will be liable to a fine of up to £5k and/or a prison sentence. Where on conviction on indictment, a fine and/or imprisonment for a term not exceeding 2 years can be imposed.
More information can be found at:
Private renting for tenants: evictions: Harassment and illegal evictions - GOV.UK (www.gov.uk)

Protection from Eviction Act 1977 (legislation.gov.uk)

A landlord does not have to provide 24hr notice of entry to access ***communal areas*** of a House in Multiple Occupation. Therefore, this would not generally be deemed as harassment.

Enterprise and Regulatory Reform Act 2013

The Act provides directions on imposing sanctions for breaches of sections 83 and 84 in relation to membership of Redress Schemes.

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

This order requires letting agents and property managers to be members of an approved or designated Redress Scheme so that members can be investigated when complaints are made against them in connection with that work.

Where a letting agent or property manager is found not to be a member of a scheme then a monetary penalty can be imposed to a maximum of £5,000.

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a monetary penalty. This will set out:

- The reasons for imposing the monetary penalty,
- The amount of the penalty,
- Information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has evidenced a breach.

The Council shall ask to be provided any financial information that they feel shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

A person who is given a notice of intent may make written representations to the Council about the intention to impose a monetary penalty within 28 days from the date when the notice was given.

A senior officer, not previously involved, will consider the case after the 28 days. This will usually be the Head of Housing and Community Support or another relevant officer at least at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- Decide whether to impose a monetary penalty on the property agent,
- If it is decided to do so, decide the amount of the penalty, and
- Withdraw a penalty

If the decision is made to impose a financial penalty, the council will issue the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the reasons for imposing the monetary penalty,

- information about the amount to be paid,
- information about how the payment may be made,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

Appeals can be made to the First-tier Tribunal against:

- the decision to impose a monetary penalty was based on an error of fact,
- the decision was wrong in law,
- the amount of the monetary penalty is unreasonable,
- the decision was unreasonable for any other reason

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.
Fenland District Council may at any time withdraw a notice of intent or final notice; or reduce the amount specified in a notice of intent or final notice.

Sums received by an enforcement authority under a monetary penalty may be used by the authority for any of its functions.

Determining Penalties

The Council will consider the following factors to help ensure that any penalty is set at an appropriate level:

- **Severity of the breach** - the more serious the breach, the higher the penalty should be. This should include considering:
    - The track record of the agent – a higher penalty will be appropriate where the agent has a history of failing to comply with their obligations and/or their actions were deliberate, and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Agents are running a business and should be expected to be aware of their legal obligations; and
    - Harm caused to the tenant or landlord – the greater the harm, the greater the amount should be when imposing a financial penalty.

- **Deterring agents from breaching the Requirement Regulations 2014** - Breaching the legal requirements of mandatory redress schemes is not a criminal offence therefore agents cannot be prosecuted for non-compliance. In light of this while the monetary penalty should be proportionate and reflect both the severity of the breach and previous track record of the agent, it is important that it is set at a high enough level to ensure that it has a real economic impact on the agent and demonstrates the consequences of not complying with legal obligations. This should include considering:
    - Deterring the agent from repeating the breach,
    - Deterring others from committing similar breach, and
    - Removing any financial benefit, the agent may have obtained because of committing the breach.

- **Aggravating and mitigating factors -** In order to determine the monetary penalty, the enforcement authority should consider whether there are any aggravating factors and/or mitigating factors in each case.

- **Fairness and proportionality.** The final determination of any financial penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. Factors to consider include:

    - Totality principle. If issuing a financial penalty for more than one breach, or where the agent has already been issued with a penalty, consider whether the total monetary penalties are just and proportionate to the breaches.
    - Impact of the monetary penalty on the agent's ability to comply with the law and whether it is proportionate to their means.
    - Impact of the monetary penalty on the business – if the fine would be disproportionate to the turnover/scale of the business or would lead to the agent going out of business.

A record of each decision and the reason for determining the monetary penalty must be made by the enforcement authority.

Penalty Structures

Although the Council has a wide discretion in determining the appropriate level of the monetary penalty on a case-by-case basis, regards has been given to statutory guidance when producing this policy.

Monetary Penalties issued under The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 have a maximum penalty amount of £5,000.

When issuing penalties, The Council has based the fine structure in line with the lead authority and the national approach to promote consistency, alongside local priorities.

Where a penalty is to be imposed, the following seven steps below shall be used to determine the level of the fine

Step One - A decision shall first be made by considering the culpability factors:

LEVEL	DESCRIPTION
Maximum	Where the landlord or agent has intentionally and seriously breached, or seriously and flagrantly disregarded, the law and knew their actions were unlawful
Very High	Where the landlord or agent has seriously breached, or seriously and flagrantly disregarded, the law.
High	Actual foresight of, or willful blindness to, risk of a breach but nevertheless taken
Medium	Breach committed through an act or omission which a person exercising reasonable care would not commit
Low	Breach committed with little fault as significant efforts were made to address the risk although they were inadequate on the relevant occasion

Minimum	Breach was committed with little fault because there was no warning or circumstance indicating a risk, or that the failings were minor and occurred as an isolated incident

Step 2 - the harm factors should be considered and rated from the table below. Consideration should be given to the likelihood of actual harm occurring due to the breach, and the severity of that harm.

RATING	EXPLANATION
High	**High likelihood of harm** • Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business, or • High risk of an adverse effect on individual(s) – including where persons are vulnerable
Medium	**Medium likelihood of harm** • Adverse effect on individual(s) (not amounting to Category 1) • Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect. • Tenants and/or legitimate landlords or agents substantially undermined by the conduct. • The Council's work as a regulator is inhibited • Tenant or prospective tenant misled
Low	**Low likelihood of harm** • Low risk of an adverse effect on actual or prospective tenants. • Public misled but little or no risk of actual adverse effect on individual(s)
Negligible	**Negligible likelihood of harm** • Harm not a consideration in the breach

Step Three – The culpability and harm are used as references and converted using the table below to provide a point scale within the range of the financial penalty.

	CLASS OF HARM			
CULPABILITY	HIGH	MEDIUM	LOW	NEGLIGIBLE
MAXIMUM	9	8	7	6
VERY HIGH	8	7	6	5
HIGH	7	6	5	4
MEDIUM	6	5	4	3
LOW	5	4	3	2
MIMIMUM	4	3	2	1

Step 4 - The scale point is then used to provide the penalty banding.

1. £1-£83
2. £84-£166
3. £167-£500
4. £501-£1,166
5. £1,167-£1,833
6. £1,834-£2,500
7. £2,501-£3,333

8. £3,334-£4,166
9. £4,167-£5,000

Step 5 - A starting point shall be set for the fine that shall be the mid-way point of each penalty banding.

1. £42
2. £125
3. £333
4. £833
5. £1,500
6. £2,167
7. £2,917
8. £3,750
9. £4,583

Step 6 - Factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment within the banding. Not all factors will be considered at this stage as not all will be apparent until the defendant has had their opportunity to provide their representation in defense of the breaches. Factors to be considered are included in Appendix 1.

Step 7 – Fairness and proportionality shall be considered after the period to receive representations so that an informed decision can be made.

Tenant Fees Act 2019

As of the 1st of June 2020, The Act dictates that landlords or agents will no longer be able to require tenants in the private rented sector in England, or any persons acting on behalf of a tenant or guaranteeing the rent, to make payments in connection with a tenancy, excluding:

- rent, provided no earlier period is financially more than any later period
- tenancy deposit to a maximum of 5 weeks' rent where the rent is less than £50,000 per annum and 6 weeks' rent where the rent is £50,000 or higher
- refundable holding deposit to a maximum of 1 week's rent
- payment in the event of a default which applies to the reasonable costs due to a loss of a key or the late payment of rent by over 14 days, provided it is not greater than the aggregate of the amounts found by applying, in relation to each day after the due date for which the rent remains unpaid, an annual percentage rate of 3% above the Bank of England base rate to the amount of rent that remains unpaid at the end of that day
- payment of damages for breach of a tenancy agreement or an agreement between a letting agent and a relevant person
- payment on variation, assignment, or novation of a tenancy, when requested by a tenant, to a maximum of £50 or reasonable costs incurred if higher
- payment on termination of a tenancy to a maximum of the loss suffered by the landlord as a result of the termination of the tenancy
- payment in respect of council tax
- payment in respect of utilities, etc
- payment in respect of a television licence
- payment in respect of communication services to a maximum of the reasonable costs incurred by the landlord for or in connection with the provision of the service

As of the 1st of June 2020, The Act applies to Assured Shorthold Tenancies (ASTs), student accommodation and licenses to occupy housing (HMOs), in England only. The Act also applies to housing associations and local authorities, where they are letting an AST in the private rented sector.

Where an unlawful fee has been charged there is a maximum penalty of £5,000 for a first offence which is deemed a civil offence. Where a further breach is made within 5 years this constitutes a criminal offence but financial penalties of up to £30,000 can be issued as an alternative to prosecution.

In addition, the Act also dictates how holding fees should be treated. Holding deposits are to be held for up to 14 days from when paid or until a date agreed by the landlord/agent and tenant in writing. Where there is no separate agreement in writing deposits must be returned on the 15th day. The holding deposit is also required to be paid within 7 days from when a tenancy agreement is entered, the day the landlord decides not to enter into a tenancy agreement or where the landlord and tenant fail to enter into an agreement before the deadline for an agreement.

When making the decision whether to prosecute or not the following may be considered:

- history of non-compliance
- severity of the breach
- deliberate concealment of activity or evidence

- knowingly or recklessly supplying false or misleading evidence
- intent of the landlord/agent, individually and/or corporate body
- attitude of the landlord/agent
- deterrent effect of a prosecution on the landlord/agent and others
- extent of financial gain as result of the breach

Where a holding deposit is unlawfully retained, this civil breach can be served with a financial penalty. Enforcement authorities will be able to retain the money raised through financial penalties with this money reserved for future housing enforcement in the private rented sector. Each request for a prohibited payment is a breach. For example, the following would be considered multiple breaches:

- an agent/landlord charging different tenants under different tenancy agreements prohibited fees
- an agent/landlord charging one tenant multiple prohibited fees for different services at different times
- an agent/landlord charging one tenant multiple prohibited fees for different services at the same time
- an agent/landlord charging one tenant one total prohibited fee which is made up of different separate prohibited requirements to make a payment, e.g., £200 requested for arranging the tenancy and doing a reference check would represent multiple breaches

Where an agent or landlord is being fined for multiple breaches at once and they have not previously been fined, the financial penalty for each of these breaches is limited to up to £5,000 each. The Act provides that the period of five years (in which a second breach could occur) begins on the day on which the relevant penalty was imposed, or the person was convicted. The date on which the penalty is imposed is the date specified in the final notice.

Fenland District Council may enforce this Act, however, local weights and measures authority in England have a duty to enforce in its area. For Fenland this would be Cambridgeshire County Council.

The lead enforcement authority, Bristol City Council, can also enforce the Act and will do so when breaches are reported directly to them.

Where Fenland District Council chooses to enforce this legislation, they will issue the person deemed to have committed a relevant offence a notice of its proposal (‘notice of intent’) to impose a financial penalty. This will set out:

- the date the notice was served,
- the amount of the proposed financial penalty,
- the reasons for proposing to impose the penalty,
- information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has evidenced a breach.
The Council shall ask to be provided any financial information that they feel shall influence the defendant’s ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when making a decision regarding the level of fine.

A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from the date when the notice was given.

A senior officer not previously involved will consider the case after the 28 days. This will usually be the Head of Housing and Community Support or another relevant officer at least at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them:

- Decide whether to impose a financial penalty on the person, and
- If it decides to do so, decide the amount of the financial penalty

If the decision is made to impose a financial penalty, the council will give the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

- the date the final notice is served,
- the amount of the financial penalty,
- the reasons for imposing the penalty,
- information about how to pay the penalty,
- the period for payment of the penalty (28 days),
- information about rights of appeal, and
- the consequences of failure to comply with the notice

A person who receives a final notice may appeal, within 28 days to the First-tier Tribunal (Property Chamber) against:

- the decision to impose a penalty, or
- the amount of the penalty

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

Fenland District Council may at any time withdraw a notice of intent or final notice; reduce the amount specified in a notice of intent or final notice; or amend a notice of intent or final notice to remove the requirement to pay an amount which the authority required to be paid, which includes:

- any part or all of any prohibited payment to the relevant person,
- an amount which does not exceed the amount of the payment or (as the case may be) the aggregate amount of the payments that the relevant person has made,
- any part or all of any holding deposit to the relevant person, or
- any amount, the authority may have required the landlord or letting agent to pay in interest on that amount

Any financial penalties under this act can be used towards meeting the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions under this Act or otherwise in relation to the private rented sector.

Determining Penalties

In accordance with statutory guidance, the Council will consider the following factors to help ensure that any penalty is set at an appropriate level:

- **Severity of the breach**. - the more serious the breach, the higher the penalty should be. This should include considering:

    - the track record of the landlord or agent – a higher penalty will be appropriate where the landlord or agent has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Agents and landlords are running a business and should be expected to be aware of their legal obligations; and
    - harm caused to the tenant - the greater the harm, the greater the amount should be when imposing a financial penalty.

- **Punishment of the landlord or agent**. A financial penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the breach and previous track record of the offender, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the landlord or agent and demonstrates the consequences of not complying with their legal obligations.
  This should include considering:

    - Deterring the landlord or agent from repeating the breach,
    - Deterring others from committing similar breaches, and
    - Remove any financial benefit the landlord or agent may have obtained because of committing the breach.

- **Aggravating and mitigating factors.** In order to determine the financial penalty, the enforcement authority should consider whether there are any aggravating and/or mitigating factors in each case.

- **Fairness and proportionality.** The final determination of any financial penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. Factors to consider include:

    - Totality principle. If issuing a financial penalty for more than one breach, or where the landlord or agent has already been issued with a penalty, consider whether the total financial penalties are just and proportionate to the breaches. Where the landlord or agent is issued with more than one financial penalty, the enforcement authority should consider the guidance ‘Offences Taken into Consideration and Totality by the Sentencing Council for England and Wales’.
    - Impact of the financial penalty on the landlord or agent’s ability to comply with the law and whether it is proportionate to their means (e.g., risk of loss of home)
    - Impact of the financial penalty on third parties (e.g., employment of staff or

other customers)

A record of each decision and the reason for determining the financial penalty must be made by the enforcement authority

Penalty Structures

Although the Council has a wide discretion in determining the appropriate level of financial penalty in any particular case, regards has been given to statutory guidance when producing this policy.

Financial Penalties issued under the Tenant Fees Act 2019 have a maximum penalty amount of £5,000 for first offences and £30,000 for second offences.

When issuing penalties, The Council has based the fine structure in line with the lead authority and the national approach to promote consistency, alongside local priorities.

Where a penalty is to be imposed, the following seven steps below shall be used to determine the level of the fine

Step One - A decision shall first be made by considering the culpability factors:

LEVEL	DESCRIPTION
Maximum	Where the landlord or agent has intentionally and seriously breached, or seriously and flagrantly disregarded, the law and knew their actions were unlawful
Very High	Where the landlord or agent has seriously breached, or seriously and flagrantly disregarded, the law.
High	Actual foresight of, or willful blindness to, risk of a breach but nevertheless taken
Medium	Breach committed through an act or omission which a person exercising reasonable care would not commit
Low	Breach committed with little fault as significant efforts were made to address the risk although they were inadequate on the relevant occasion
Minimum	Breach was committed with little fault because there was no warning or circumstance indicating a risk, or that the failings were minor and occurred as an isolated incident

Step 2 - the harm factors should be considered and rated from the table below. Consideration should be given to the likelihood of actual harm occurring due to the breach, and the severity of that harm.

RATING	EXPLANATION
High	**High likelihood of harm** • Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business, or • High risk of an adverse effect on individual(s) – including where persons are vulnerable
Medium	**Medium likelihood of harm** • Adverse effect on individual(s) (not amounting to Category 1)

	• Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect. • Tenants and/or legitimate landlords or agents substantially undermined by the conduct. • The Council's work as a regulator is inhibited • Tenant or prospective tenant misled
Low	**Low likelihood of harm** • Low risk of an adverse effect on actual or prospective tenants. • Public misled but little or no risk of actual adverse effect on individual(s)
Negligible	**Negligible likelihood of harm** • Harm not a consideration in the breach

Step Three – The culpability and harm are used as references and converted using the table below to provide a point scale within the range of the financial penalty.

	CLASS OF HARM			
CULPABILITY	HIGH	MEDIUM	LOW	NEGLIGIBLE
MAXIMUM	9	8	7	6
VERY HIGH	8	7	6	5
HIGH	7	6	5	4
MEDIUM	6	5	4	3
LOW	5	4	3	2
MIMIMUM	4	3	2	1

Step 4 - The scale point is then used to provide the penalty banding as below for first offences.

1. £1-£83
2. £84-£166
3. £167-£500
4. £501-£1,166
5. £1,167-£1,833
6. £1,834-£2,500
7. £2,501-£3,333
8. £3,334-£4,166
9. £4,167-£5,000

And from the following list for second offences

1. £1-£500
2. £501-£1,000
3. £1,001-£3,000
4. £3,001-£7,000
5. £7,001-£11,000
6. £11,001-£15,000
7. £15,001-£20,000
8. £20,001-£25,000
9. £25,001-£30,000

Step 5 - A starting point shall be set for the fine that shall be the mid-way point of each

penalty banding for first offences.

1. £42
2. £125
3. £333
4. £833
5. £1,500
6. £2,167
7. £2,917
8. £3,750
9. £4,583

And from the following list for second offences.

1. £250
2. £750
3. £2,000
4. £5,000
5. £9,000
6. £13,000
7. £17,500
8. £22,500
9. £27,500

Step 6 - Factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment within the banding. Not all factors will be considered at this stage as not all will be apparent until the defendant has had their opportunity to provide their representation in defense of the breaches. Factors to be considered are included in Appendix 1.

Step 7 – Fairness and proportionality shall be considered after the period to receive representations so that an informed decision can be made.

Non-Private Rented Sector Properties

Owner Occupied

Other than in exceptional circumstances, the council expects owner-occupiers, including long leaseholders, to take their own action to remedy hazards at their own properties. The Council will decide whether there are exceptional circumstances in a particular case to justify intervention"

Housing Associations/Registered Providers (RP)

Upon receiving a complaint relating to an RP property, the council will normally notify the RP that a complaint has been received and/or a hazard identified and seek the RP's comments and proposals. However, the Council will, if deemed necessary, utilise all powers available under this policy, to resolve matters.

Where the council has identified hazards, and the Registered Provider has scheduled a programme of works, which will remove the hazard, the officer will consider the programme when determining the most appropriate course of action. The council will liaise with the RP to agree a schedule to deal with category 1 and 2 hazards in advance of the planned improvements. In relation to the Space and Crowding hazard, where defect have been scored as a Category 1 or high Category 2 hazard, particular account will be taken of the availability of suitable alternative accommodation

Additional Enforcement Powers

The following tools are also available where the Housing Act 2004 measures are not appropriate, or do not sufficiently deal with the problem.

- Environmental Protection Act 1990 Section 80 - Notices can be served if the officer is of the opinion that there is a statutory nuisance at the premises. The premises must be deemed prejudicial to health or a nuisance

- Building Act 1984 Section 59- Used to deal with defective drainage issues in existing buildings

- Building Act 1984 Section 64- Used where sanitary conveniences are insufficient or in need of replacement and are considered prejudicial to health or a nuisance

- Building Act 1984 Section 76 - Used where the property is so defective as to be prejudicial to health. This notice notifies the person responsible of the local authority's intention to remedy the problem (similar to work in default)

- Building Act 1984 Section 79 – Used where a building or neglected site is in a ruinous and dilapidated condition and requires the owner to execute such works of repair or restoration, or if he so elects, to take such steps for demolishing the building or structure, or any part thereof, and removing any rubbish or other material resulting from or exposed by the demolition

- Building Act 1984 Section 84 – Used where there is unsatisfactory paving and drainage of yards and passages

- Building Act 1984 Sections 95 and 96 – Provides a power of entry to any property at all reasonable hours provided the occupier has been given 24 hours-notice:
    - for the purpose of ascertaining whether there is, or has been, on or in connection with the premises, a contravention of this Act, or of any building regulations, that it is the duty of the local authority to enforce
    - ascertaining whether or not circumstances exist that would authorise or require the local authority to take any action, or execute any work, or the purpose of taking any action, or executing any work, authorised or required by this Act, or by building regulations,
    - for the purpose of taking any action, or executing any work, authorised, or required by this Act, or by building regulations, or by an order made under this Act, to be taken, or executed, by the local authority, or
    - generally, for the purpose of the performance by the local authority of their functions under this Act or under building regulations

  Section 96 allows an Officer to take with him such other persons as may be necessary

- Public Health Act 1936 Section 287 – Gives the Officer a right to enter any premises at all reasonable hours when giving 24 hours-notice to any occupier for the purpose of ascertaining whether there is, or has been, on or in connection with the premises any contravention of the provisions of this Act, being provisions which it is the duty of the council to enforce, ascertaining those circumstances, for the purpose of taking

action and generally, for the purpose of the performance by the council of their functions under this Act

- Local Government (Miscellaneous Provisions) Act 1982 Section 27 – Gives the power to repair drains and to remedy stopped-up drains

- Local Government (Miscellaneous Provisions) Act 1982 Section 29 (Notice of Intended Entry) - Used to prevent unauthorised access (for example broken windows, doors etc.) to get the owner to secure the premises

- Prevention of Damage by Pests Act 1949 Section 22 - Provides a right of entry to an Officer to inspect for rats and mice and to ascertain compliance with any notice provided any occupier has been given 24 hours-notice

- Housing Act 1985 (As Amended) - Some provisions within the 1985 Act have not been revoked and may be appropriate to use in some circumstances. Overcrowding provisions are still available and can be used where the 2004 Act is not sufficient. The other provisions relate to houses in multiple occupation (HMO) and the Housing (Management of Houses in Multiple Occupation) Regulations 1990. These have been revoked with regards to all types of HMO, except certain converted blocks of flats. These regulations can be used to deal with disrepair and management issues of this type of HMO only.

The following legislation is also used as part of the day-to-day collection of information, preparing cases for prosecution and gathering evidence:

- Local Government (Miscellaneous Provisions) Act 1976 Section 16 - Used to formally request information about a premise or a person
- Police and Criminal Evidence Act 1984, Criminal Procedures and Investigation Act 1996, Regulation of Investigatory Powers Act 2000, Investigatory Powers Act 2016 – used in relation to interviews undercaution, prosecution and gathering of evidence

Where housing or other related legislation is introduced, which is enforced by the Council and permits the imposition of any monetary penalty or penalty charge, the Council will seek to fully implement any duty or power conferred upon it.

Monitoring and Review

In accordance with the Regulators' Compliance Code, the council will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.

Contacts

If you have any comments or queries in relation to this policy, please contact the Private Sector Housing Team.

- Email: privatesectorhousing@fenland.gov.uk
- Telephone: 01354 654321
- Address: Fenland Hall, County Road, March, Cambs, PE15 8NQ

Appendix 1 – Aggravating and mitigating factors to consider when determining certain penalties

Potential factors increasing seriousness (this is not an exhaustive list):

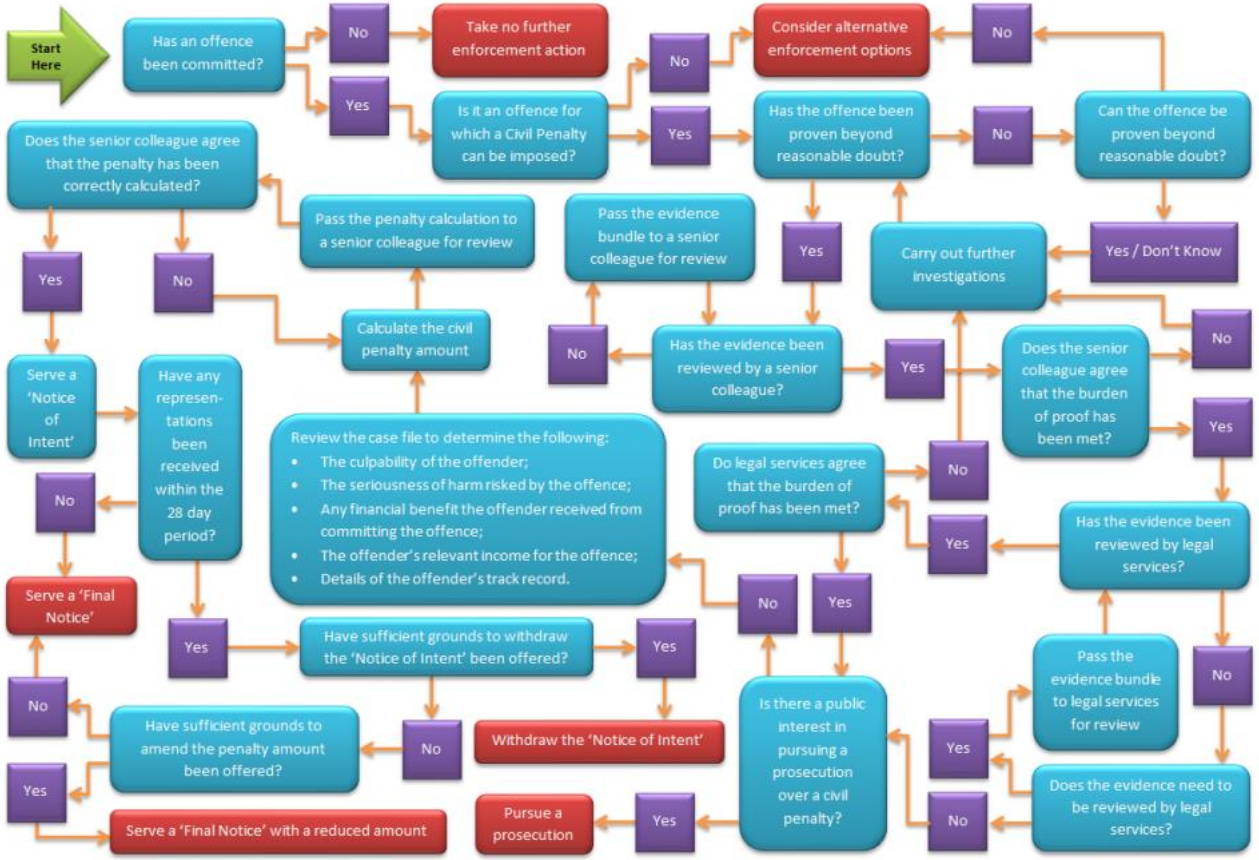
- Previous convictions - Having regard to the nature of the offences to which the conviction relates and its relevance to the current offence; and the time that has been elapsed since the conviction. Therefore, where it is established that there are appropriate previous convictions that should be considered, the level of fine shall be increased to at least one banding higher (if feasible) to reflect the history of offending. This action is to be taken having regard to:
    - the nature of the offences to which the conviction relates and its relevance to the current offence; and
    - the time that has elapsed since the conviction
    - offences committed whilst on bail

  This action is only to be taken when a prosecution is not deemed an appropriate action to take.
- Financial incentive - While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Therefore, where an offender lets and/or manages multiple properties nationally or locally the level of fine may be increased to at least one banding higher (if feasible) to ensure that the penalty is high enough to have a real economic impact on the offender.
- Statutory aggravating factors
- Record of non-compliance
- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of justice/obstructive to the investigation
- Record of providing substandard accommodation
- Refusal of free advice
- Tenant is a vulnerable individual

Potential factors reducing seriousness or reflecting personal mitigation (this is not an exhaustive list):

- No previous convictions/breaches or no relevant/recent convictions/breaches
- Steps voluntarily and promptly taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property/member of an accreditation scheme
- Self-reporting, co-operation, and acceptance of responsibility
- Good character/exemplary conduct
- Evidence of health reasons preventing reasonable compliance (poor mental health, unforeseen health issues and/or emergency health concerns)
- Landlord or agent is a vulnerable individual, where vulnerability is linked to the breach being committed
- Whether landlord or agent's primary trade or income is connected to the private rented sector
- Admission of guilt

Appendix 2 – Civil Penalty Process Flow Chart



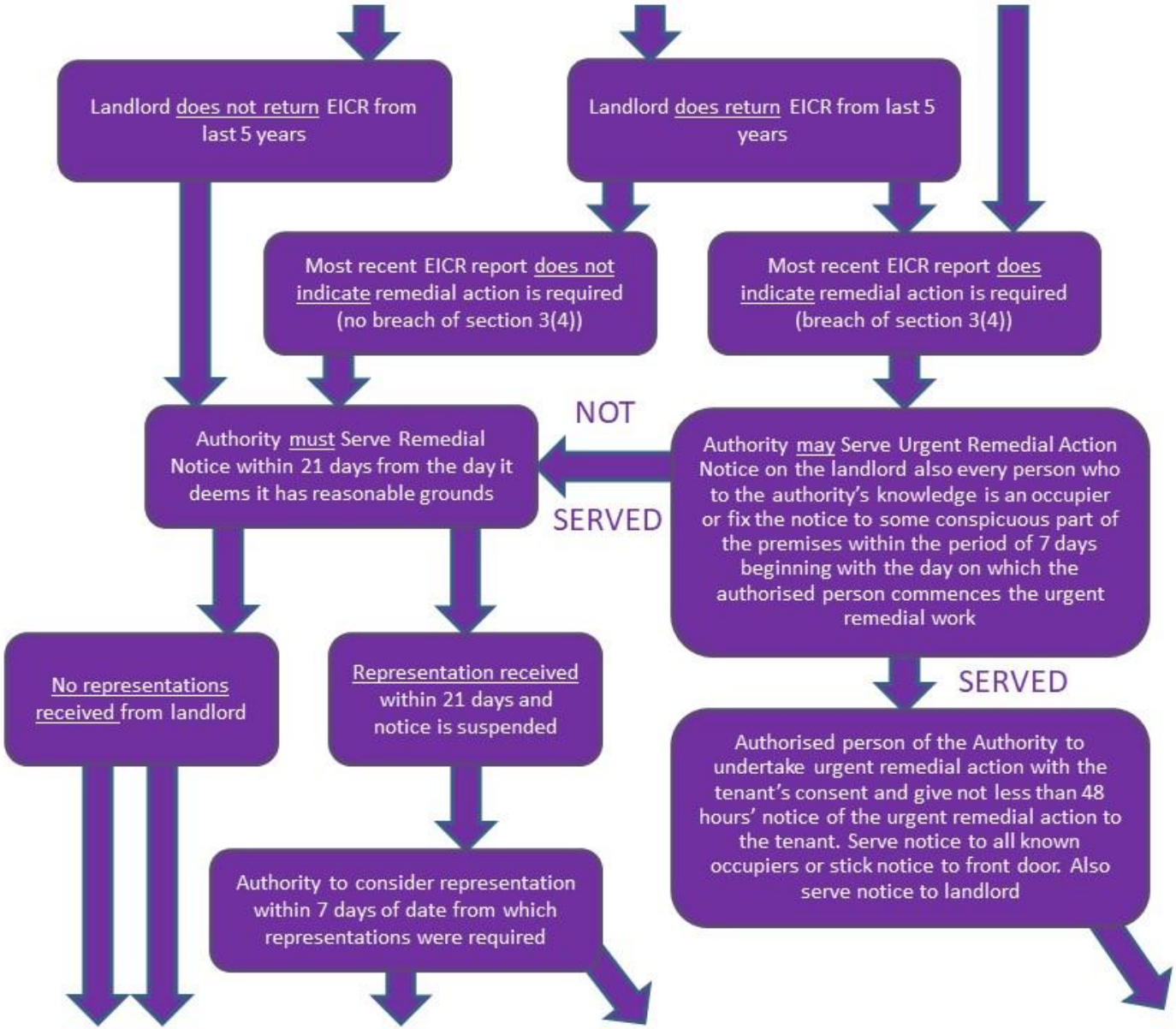
Appendix 3
EICR Breach Process Flow Chart

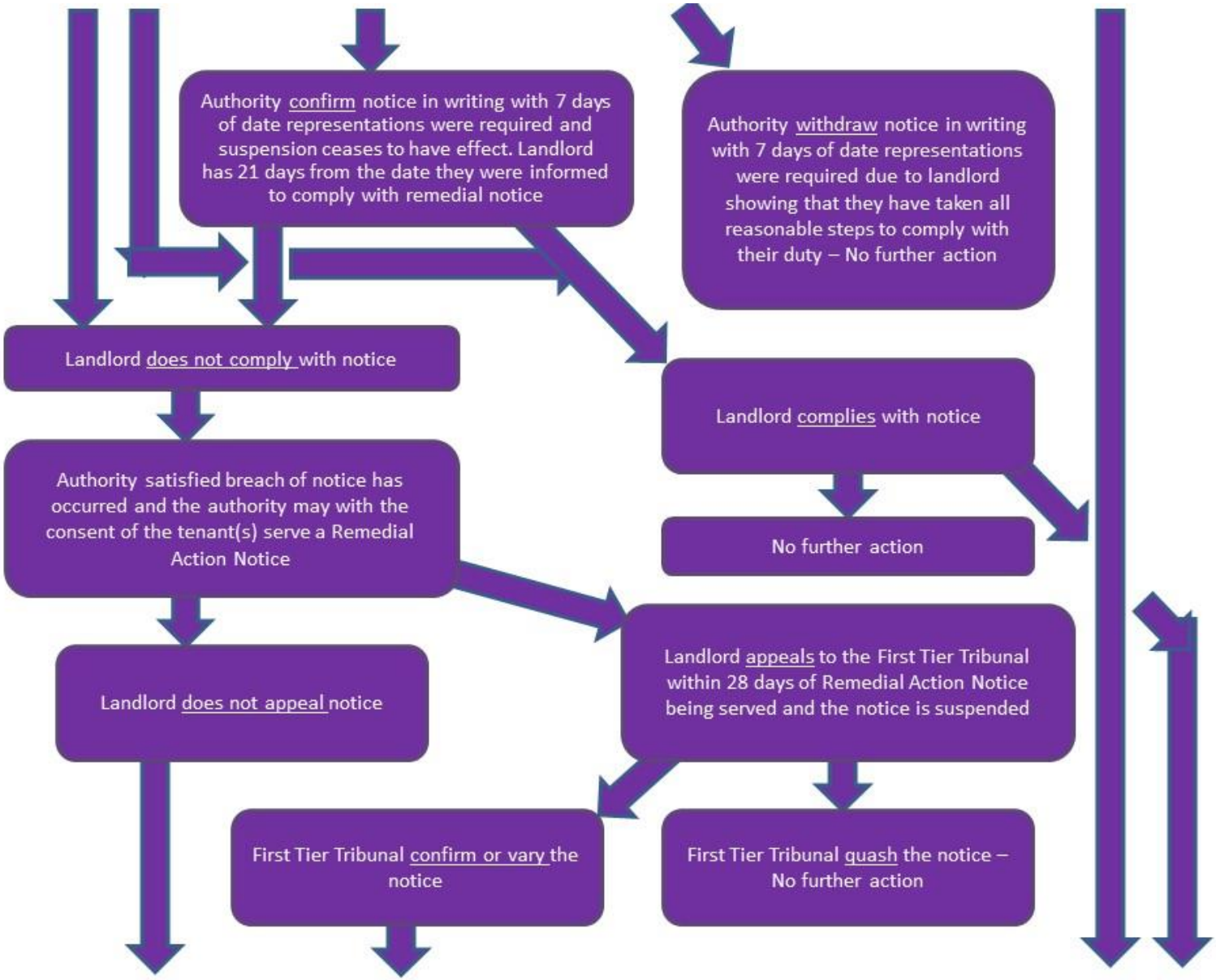
Local housing authority has reasonable grounds to believe that, in relation to residential premises a private landlord is in breach of one or more of the following duties:

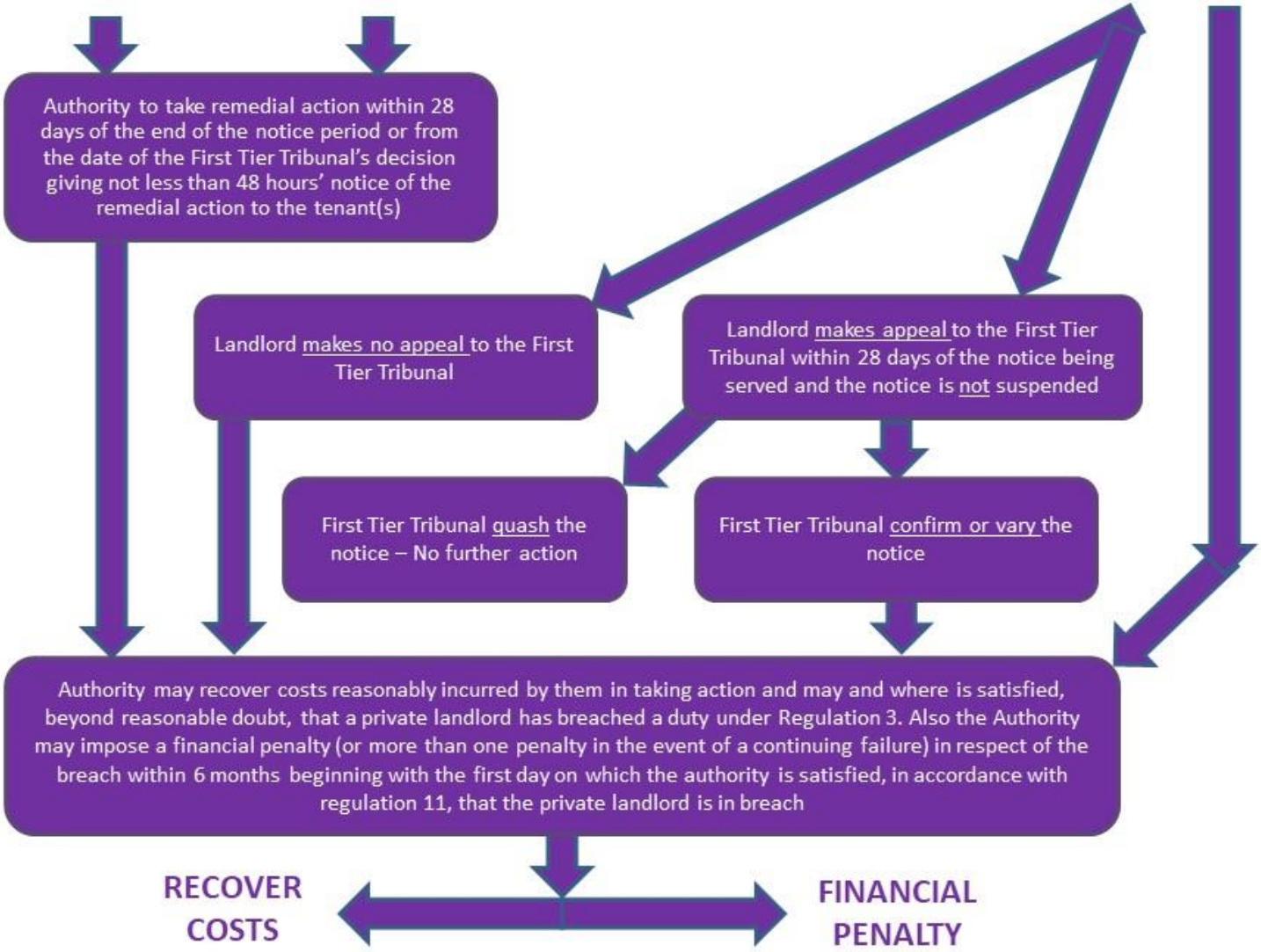
- 3(1)(a), A private landlord who grants or intends to grant a specified tenancy must ensure that the electrical safety standards are met during any period when the residential premises occupied under a specified tenancy; (new tenancies and any tenancy from 1 April 2021)
- 3(1)(b) A private landlord who grants or intends to grant a specified tenancy must supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test,
- 3(1)(c) A private landlord who grants or intends to grant a specified tenancy must supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority,
- 3(4) Where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) (A private landlord who grants or intends to grant a specified tenancy must ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within 28 days or the period specified in the report if less than 28 days,
- and 3(6) Where further investigative work is carried out in accordance with paragraph (4) and the outcome of that further investigative work is that further investigative or remedial work is required, the private landlord must repeat the steps in paragraphs (4) and (5 -*Where paragraph (4) applies, a private landlord must— (a) obtain written confirmation from a qualified person that the further investigative or remedial work has been carried out and that— (i) the electrical safety standards are met; or (ii) further investigative or remedial work is required; (b) supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and (c) supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to the local housing authority within 28 days of completion of the further investigative or remedial work*) in respect of that further investigative or remedial work

Where required Officer requests current EICR within 7 days

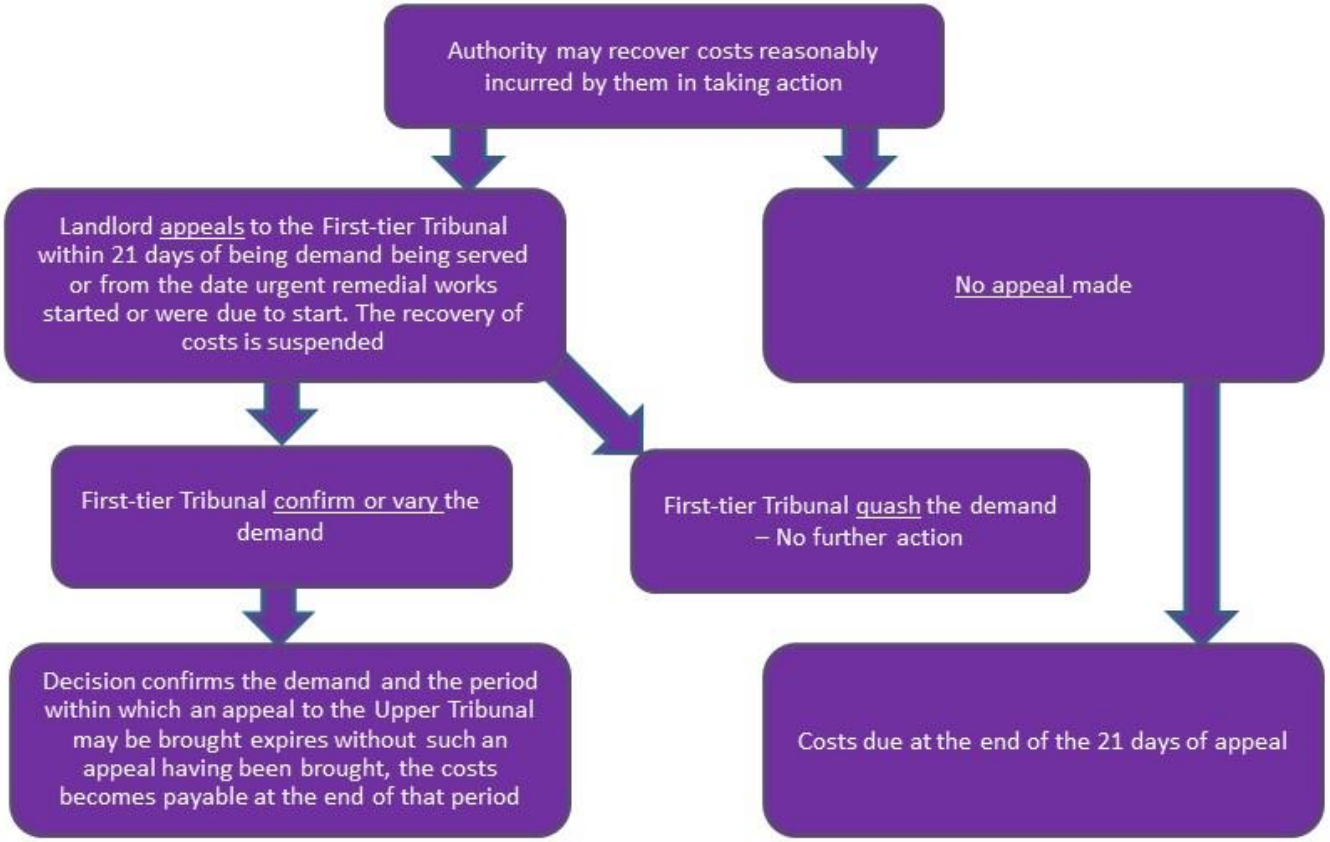
Landlord has supplied Authority with current EICR


Landlord does not return EICR from last 5 years
Landlord does return EICR from last 5 years
Most recent EICR report does not indicate remedial action is required (no breach of section 3(4))
Most recent EICR report does indicate remedial action is required (breach of section 3(4))
NOT SERVED
Authority must Serve Remedial Notice within 21 days from the day it deems it has reasonable grounds
Authority may Serve Urgent Remedial Action Notice on the landlord also every person who to the authority's knowledge is an occupier or fix the notice to some conspicuous part of the premises within the period of 7 days beginning with the day on which the authorised person commences the urgent remedial work
SERVED
No representations received from landlord
Representation received within 21 days and notice is suspended
Authority to consider representation within 7 days of date from which representations were required
Authorised person of the Authority to undertake urgent remedial action with the tenant's consent and give not less than 48 hours' notice of the urgent remedial action to the tenant. Serve notice to all known occupiers or stick notice to front door. Also serve notice to landlord

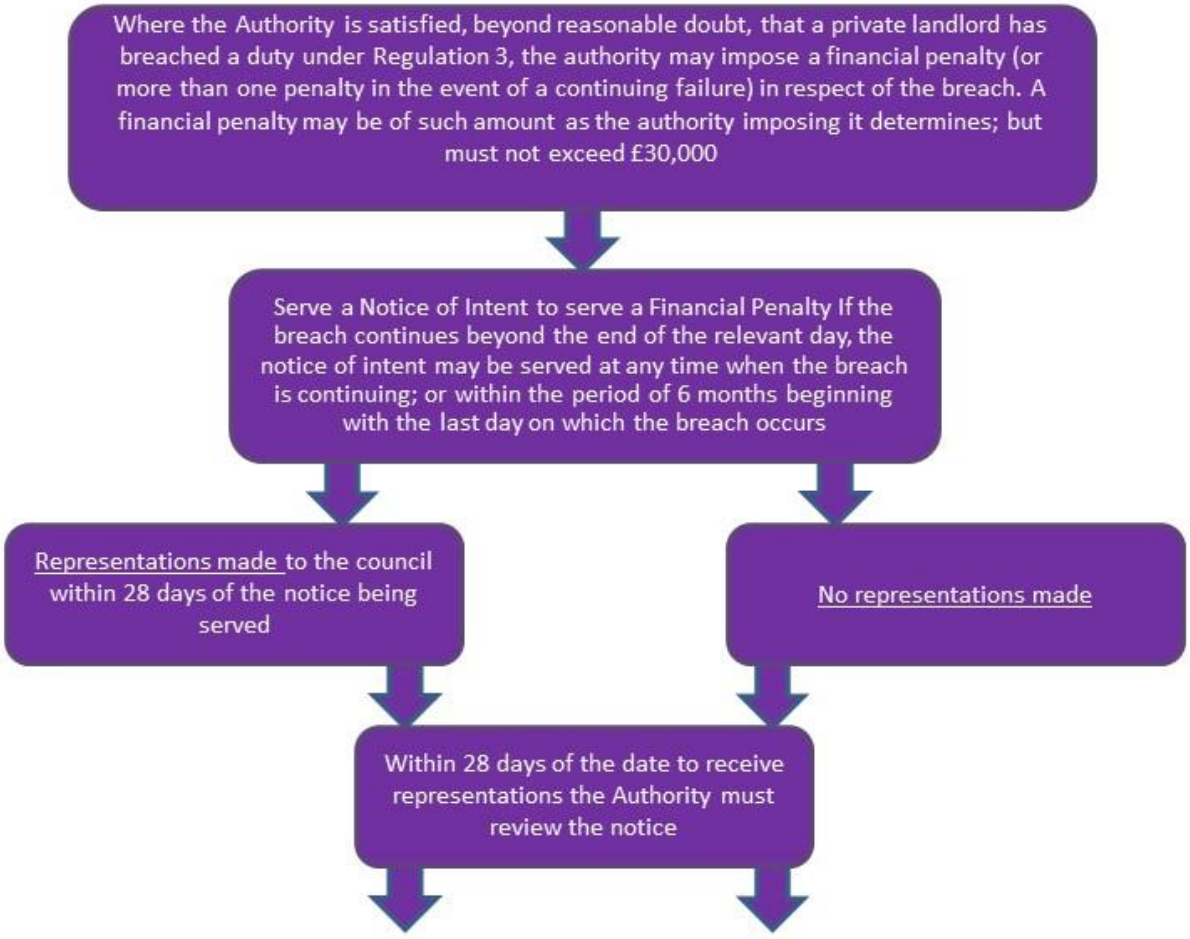

Authority confirm notice in writing with 7 days of date representations were required and suspension ceases to have effect. Landlord has 21 days from the date they were informed to comply with remedial notice
Authority withdraw notice in writing with 7 days of date representations were required due to landlord showing that they have taken all reasonable steps to comply with their duty – No further action
Landlord does not comply with notice
Landlord complies with notice
Authority satisfied breach of notice has occurred and the authority may with the consent of the tenant(s) serve a Remedial Action Notice
No further action
Landlord does not appeal notice
Landlord appeals to the First Tier Tribunal within 28 days of Remedial Action Notice being served and the notice is suspended
First Tier Tribunal confirm or vary the notice
First Tier Tribunal quash the notice – No further action

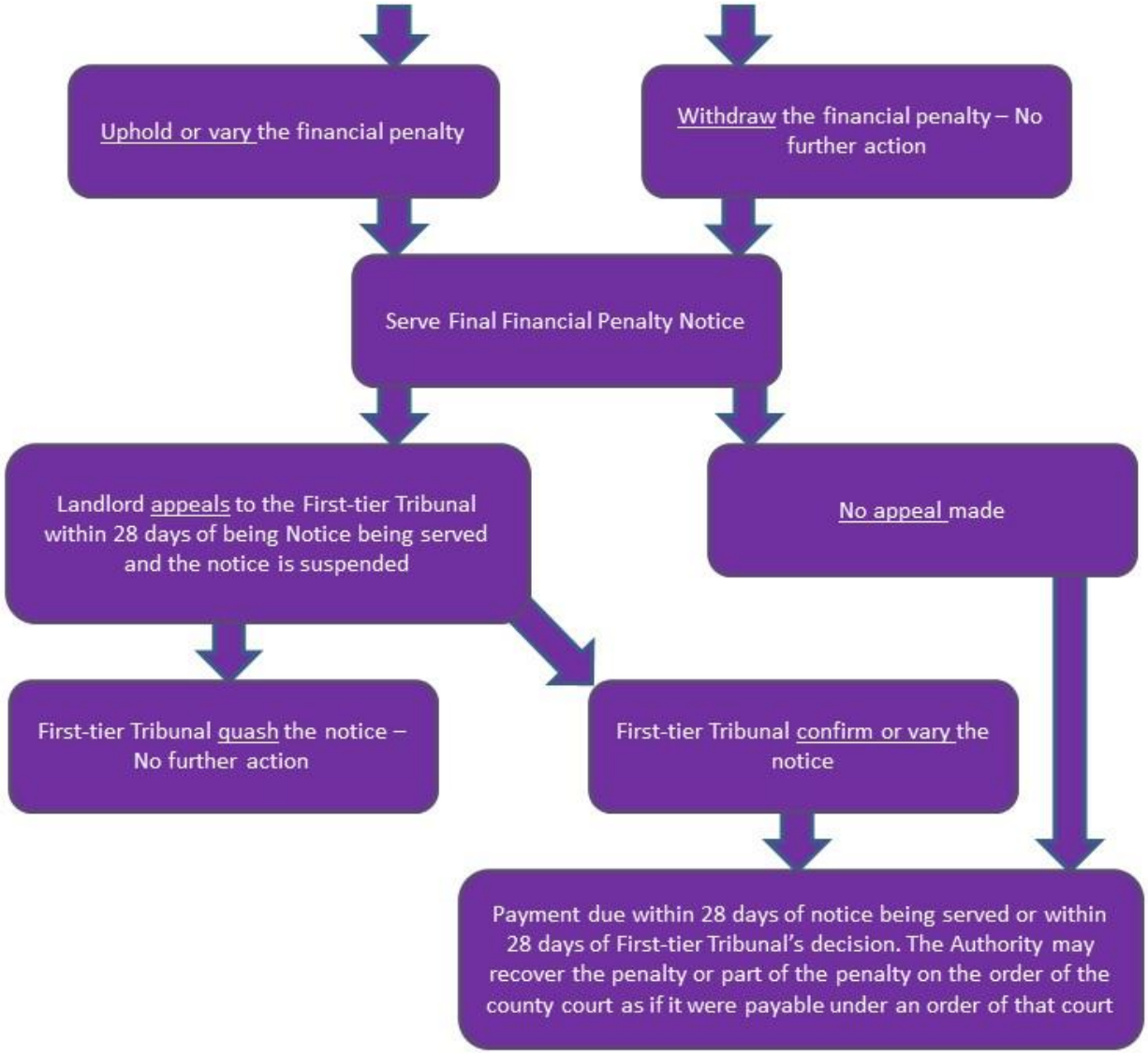

Authority to take remedial action within 28 days of the end of the notice period or from the date of the First Tier Tribunal's decision giving not less than 48 hours' notice of the remedial action to the tenant(s)
Landlord makes no appeal to the First Tier Tribunal
Landlord makes appeal to the First Tier Tribunal within 28 days of the notice being served and the notice is not suspended
First Tier Tribunal quash the notice – No further action
First Tier Tribunal confirm or vary the notice
Authority may recover costs reasonably incurred by them in taking action and may and where is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under Regulation 3. Also the Authority may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach within 6 months beginning with the first day on which the authority is satisfied, in accordance with regulation 11, that the private landlord is in breach
RECOVER COSTS
FINANCIAL PENALTY

RECOVER COSTS

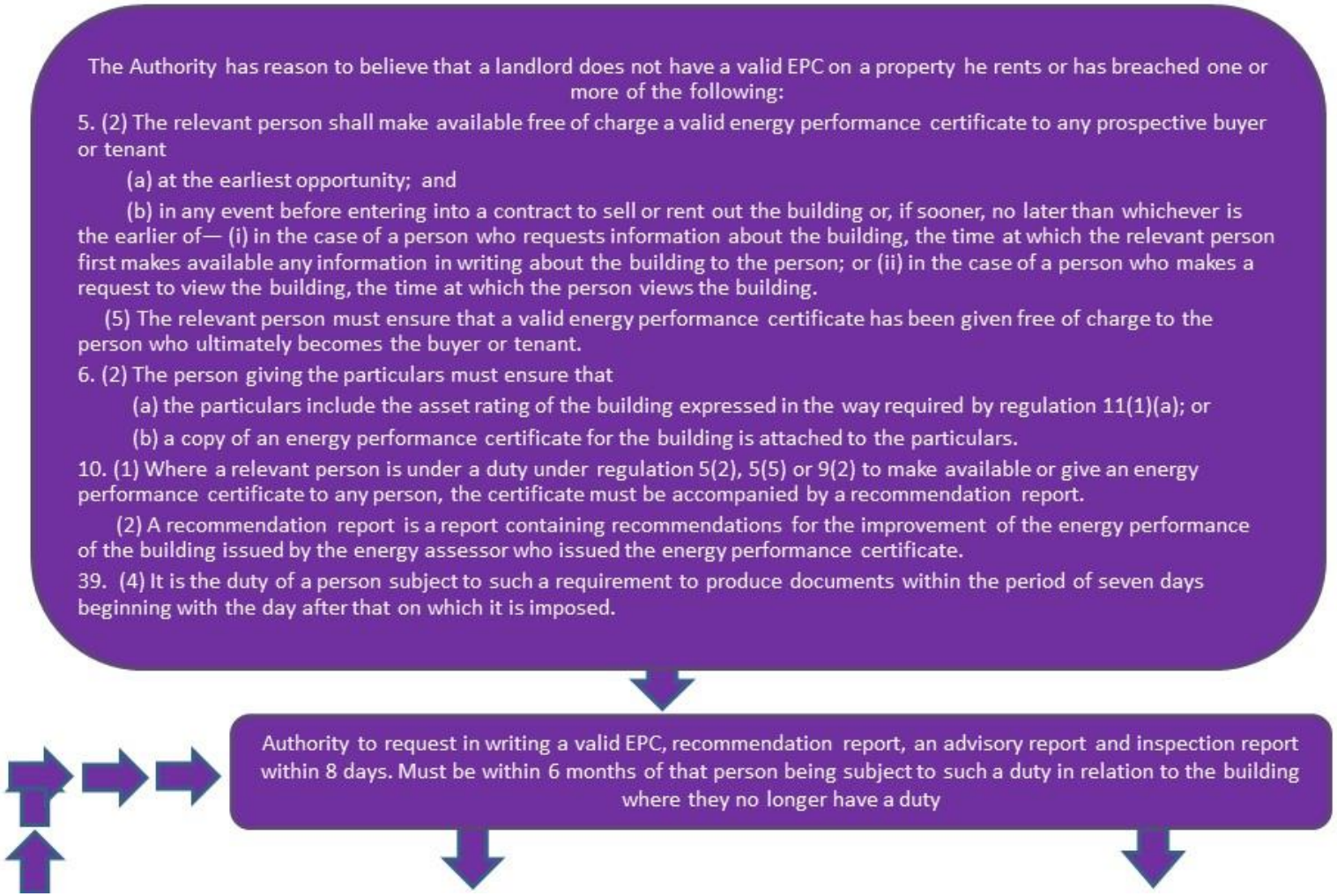


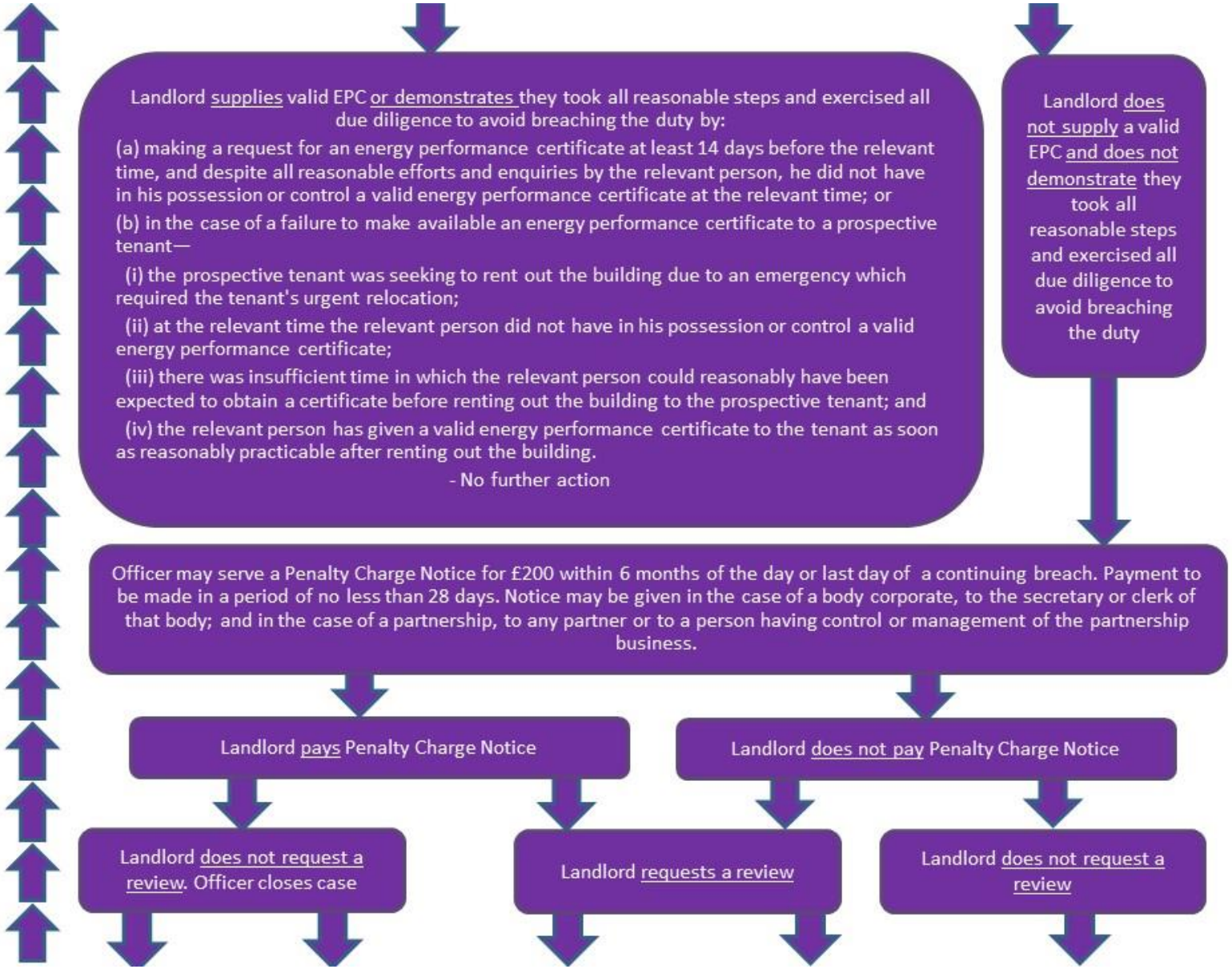
FINANCIAL PENALTY

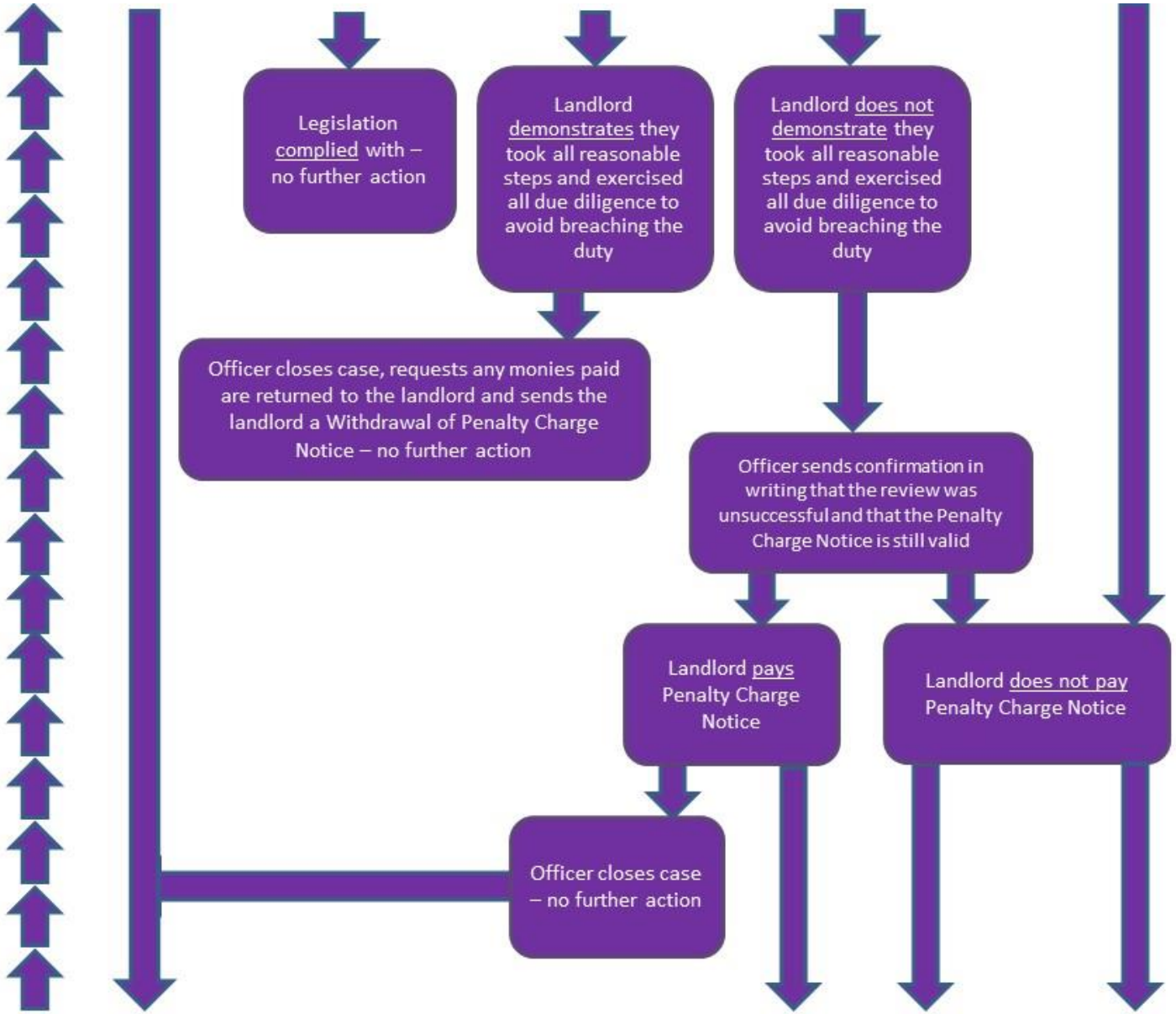


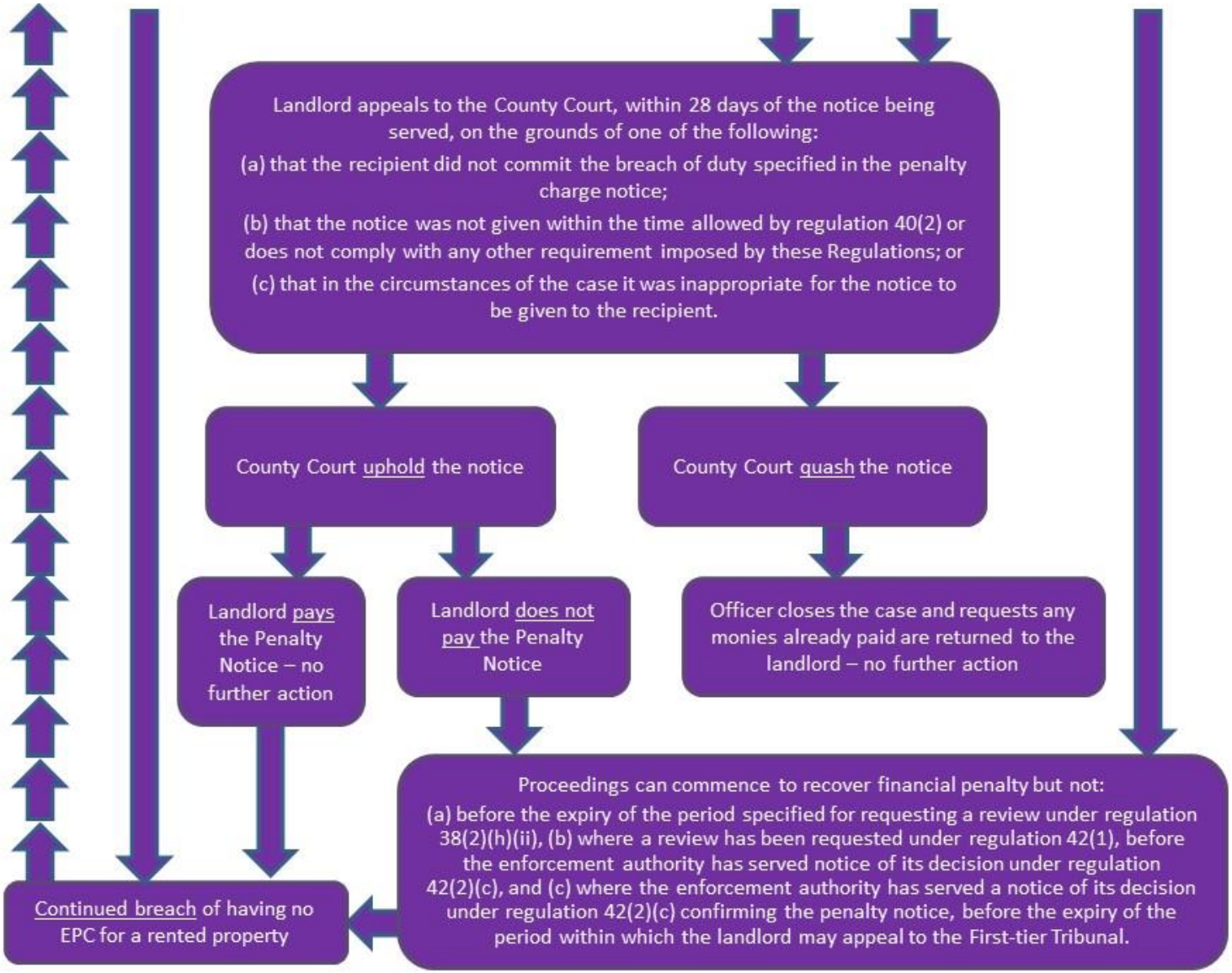

Uphold or vary the financial penalty
Withdraw the financial penalty – No further action
Serve Final Financial Penalty Notice
Landlord appeals to the First-tier Tribunal within 28 days of being Notice being served and the notice is suspended
No appeal made
First-tier Tribunal quash the notice – No further action
First-tier Tribunal confirm or vary the notice
Payment due within 28 days of notice being served or within 28 days of First-tier Tribunal's decision. The Authority may recover the penalty or part of the penalty on the order of the county court as if it were payable under an order of that court

Appendix 4
EPC Breach - Process Flow Chart

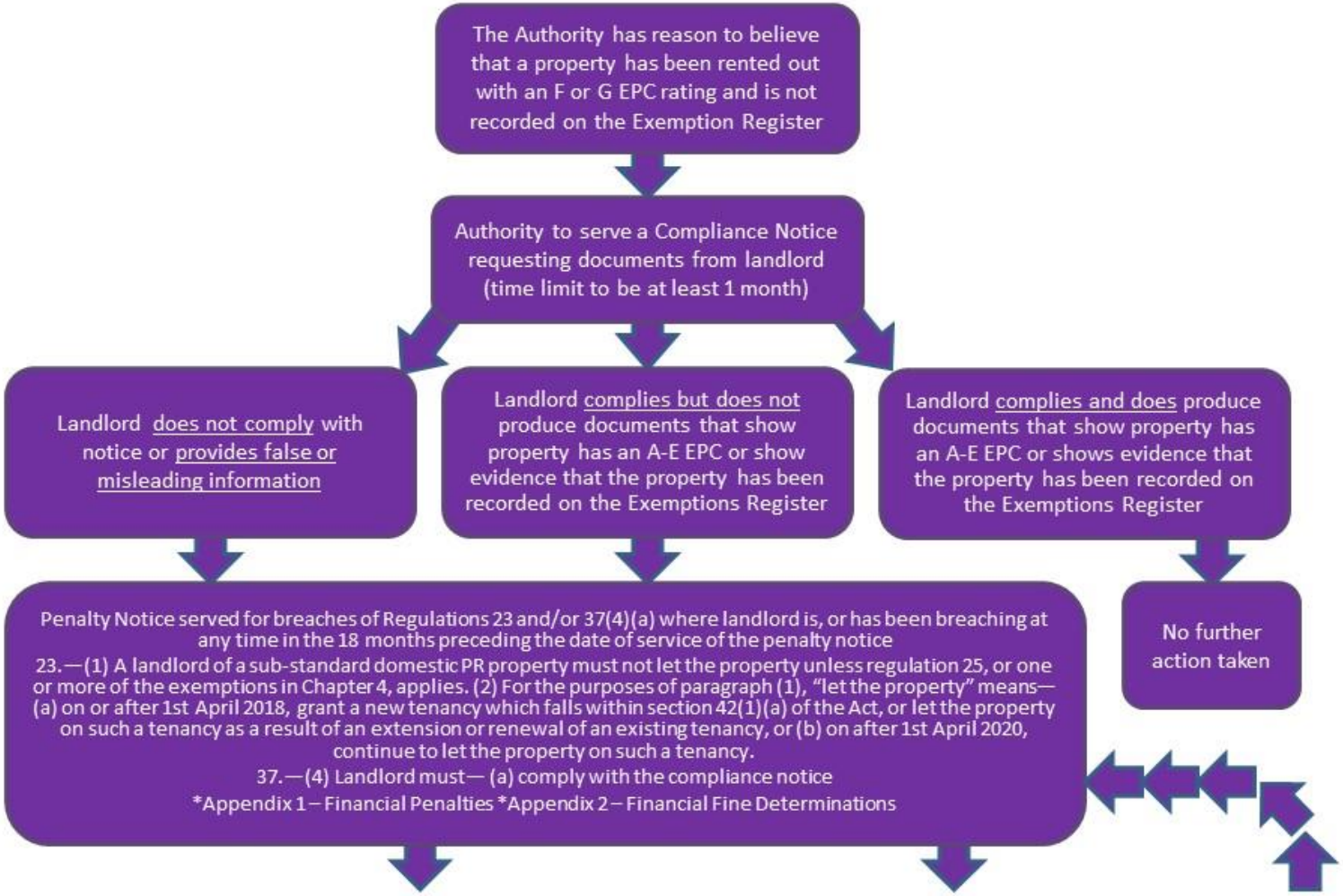


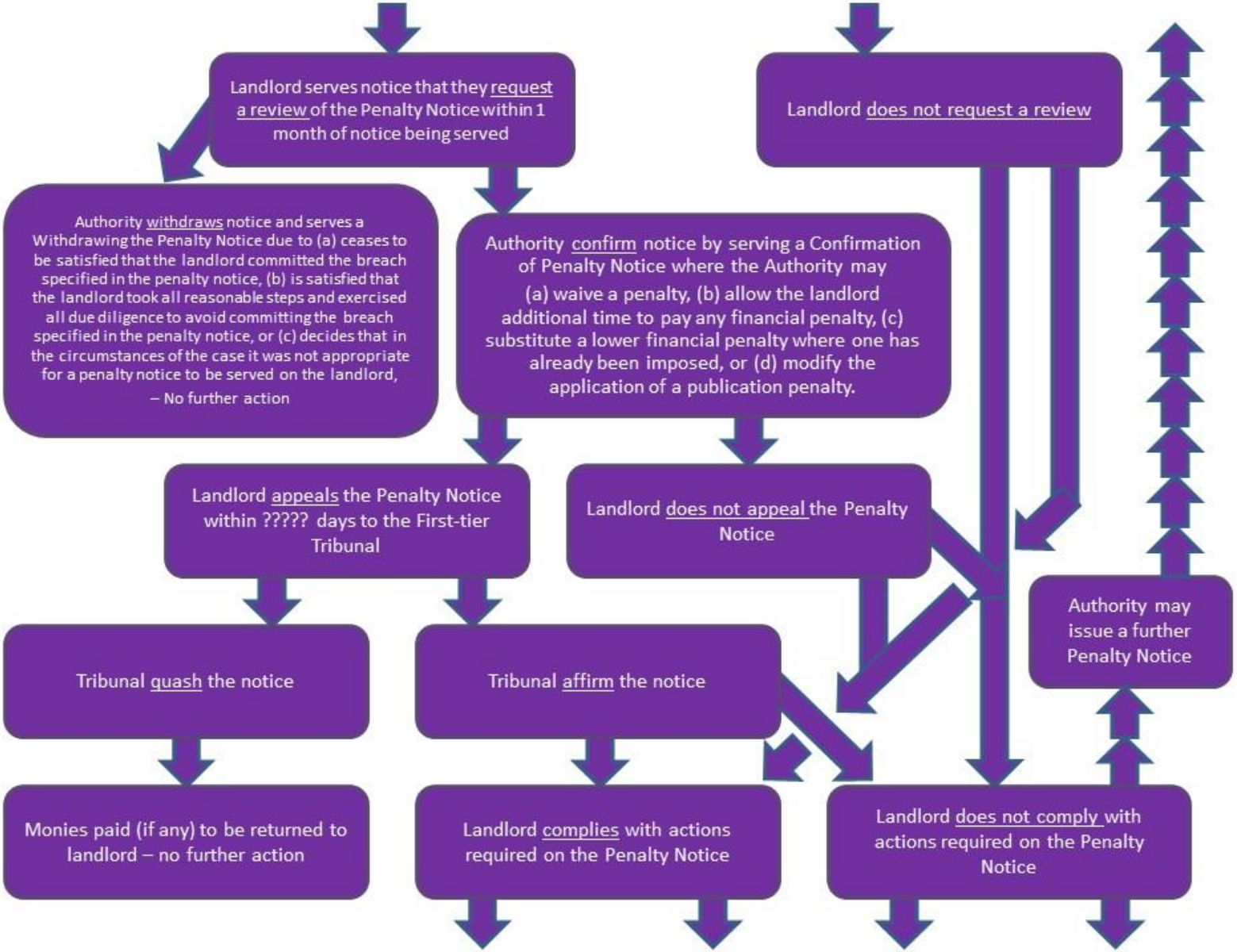

Landlord supplies valid EPC or demonstrates they took all reasonable steps and exercised all due diligence to avoid breaching the duty by:
(a) making a request for an energy performance certificate at least 14 days before the relevant time, and despite all reasonable efforts and enquiries by the relevant person, he did not have in his possession or control a valid energy performance certificate at the relevant time; or
(b) in the case of a failure to make available an energy performance certificate to a prospective tenant—
(i) the prospective tenant was seeking to rent out the building due to an emergency which required the tenant's urgent relocation;
(ii) at the relevant time the relevant person did not have in his possession or control a valid energy performance certificate;
(iii) there was insufficient time in which the relevant person could reasonably have been expected to obtain a certificate before renting out the building to the prospective tenant; and
(iv) the relevant person has given a valid energy performance certificate to the tenant as soon as reasonably practicable after renting out the building.
- No further action
Landlord does not supply a valid EPC and does not demonstrate they took all reasonable steps and exercised all due diligence to avoid breaching the duty
Officer may serve a Penalty Charge Notice for £200 within 6 months of the day or last day of a continuing breach. Payment to be made in a period of no less than 28 days. Notice may be given in the case of a body corporate, to the secretary or clerk of that body; and in the case of a partnership, to any partner or to a person having control or management of the partnership business.
Landlord pays Penalty Charge Notice
Landlord does not pay Penalty Charge Notice
Landlord does not request a review. Officer closes case
Landlord requests a review
Landlord does not request a review

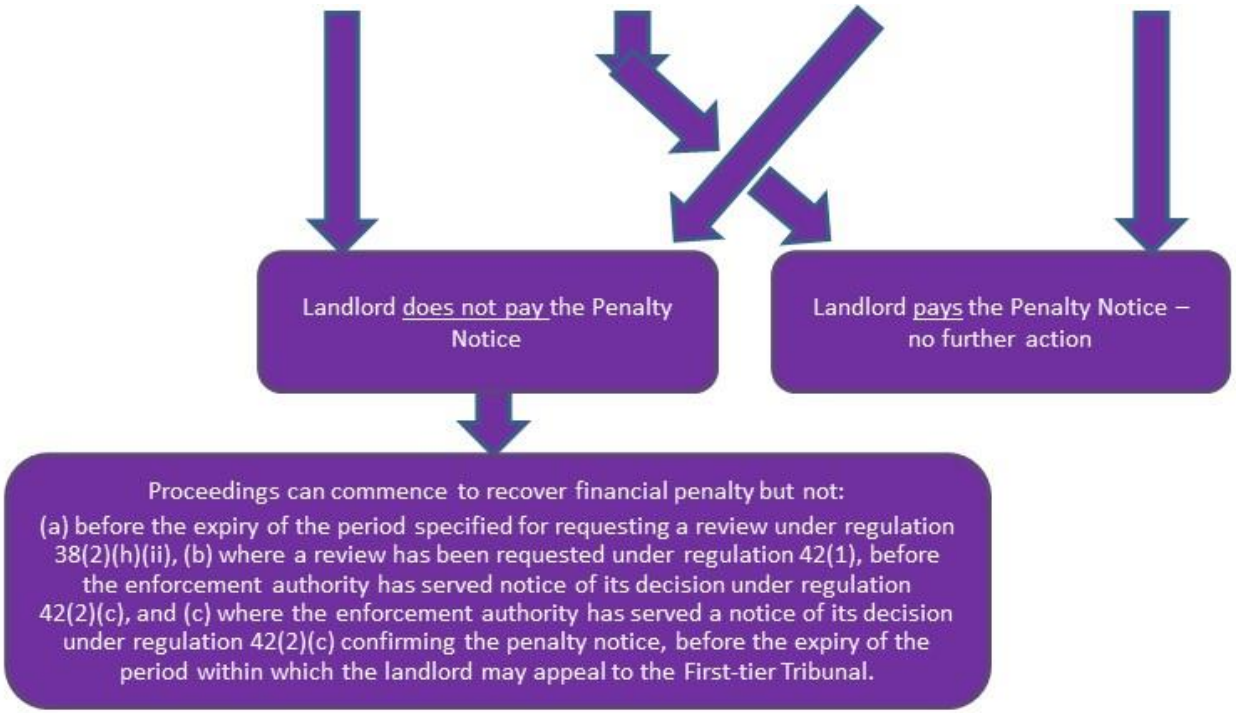

Legislation complied with – no further action
Landlord demonstrates they took all reasonable steps and exercised all due diligence to avoid breaching the duty
Landlord does not demonstrate they took all reasonable steps and exercised all due diligence to avoid breaching the duty
Officer closes case, requests any monies paid are returned to the landlord and sends the landlord a Withdrawal of Penalty Charge Notice – no further action
Officer sends confirmation in writing that the review was unsuccessful and that the Penalty Charge Notice is still valid
Landlord pays Penalty Charge Notice
Landlord does not pay Penalty Charge Notice
Officer closes case – no further action


Landlord appeals to the County Court, within 28 days of the notice being served, on the grounds of one of the following:
(a) that the recipient did not commit the breach of duty specified in the penalty charge notice;
(b) that the notice was not given within the time allowed by regulation 40(2) or does not comply with any other requirement imposed by these Regulations; or
(c) that in the circumstances of the case it was inappropriate for the notice to be given to the recipient.
County Court uphold the notice
County Court quash the notice
Landlord pays the Penalty Notice – no further action
Landlord does not pay the Penalty Notice
Officer closes the case and requests any monies already paid are returned to the landlord – no further action
Proceedings can commence to recover financial penalty but not:
(a) before the expiry of the period specified for requesting a review under regulation 38(2)(h)(ii), (b) where a review has been requested under regulation 42(1), before the enforcement authority has served notice of its decision under regulation 42(2)(c), and (c) where the enforcement authority has served a notice of its decision under regulation 42(2)(c) confirming the penalty notice, before the expiry of the period within which the landlord may appeal to the First-tier Tribunal.
Continued breach of having no EPC for a rented property

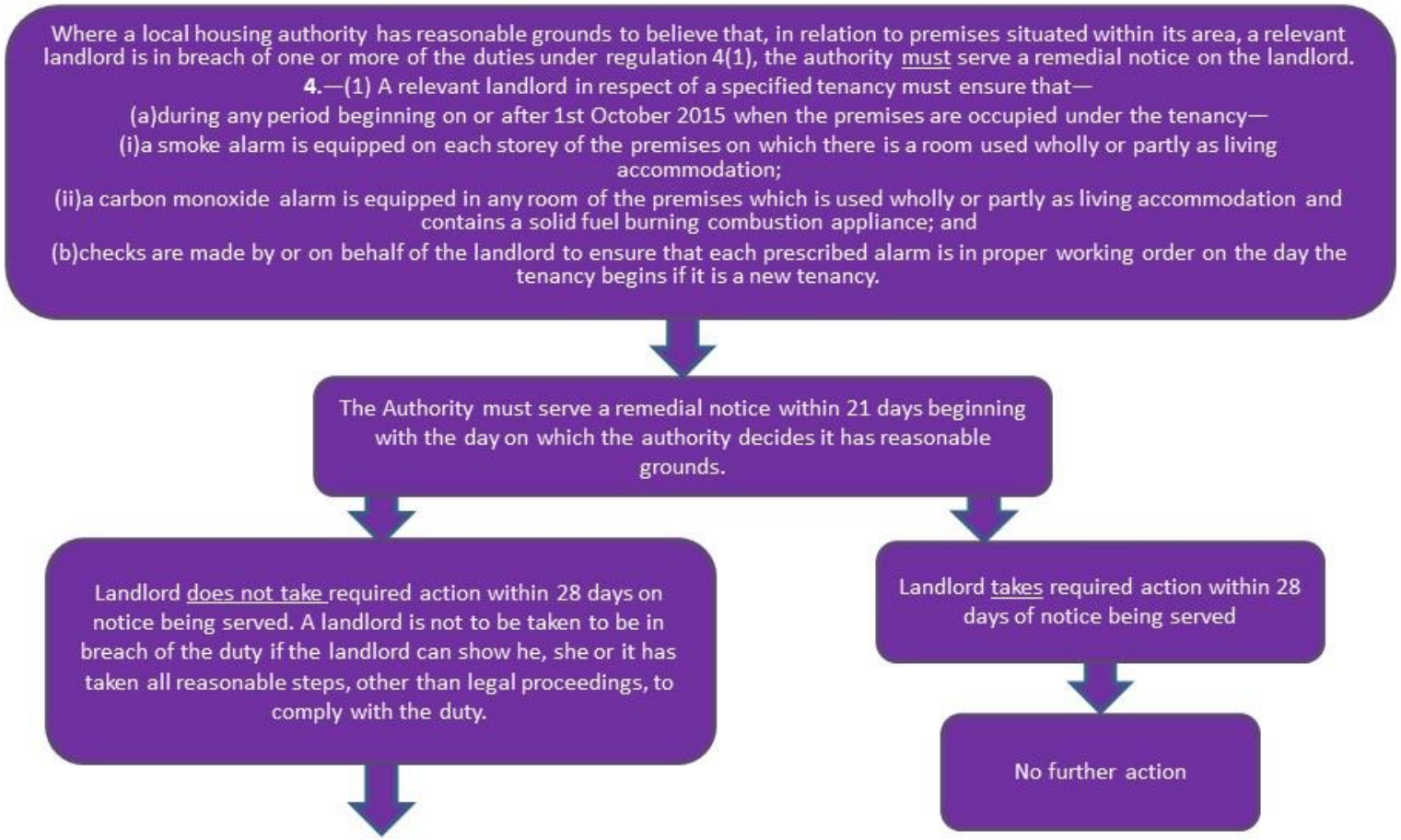
Appendix 5
MEES Breach - Process Flow Chart

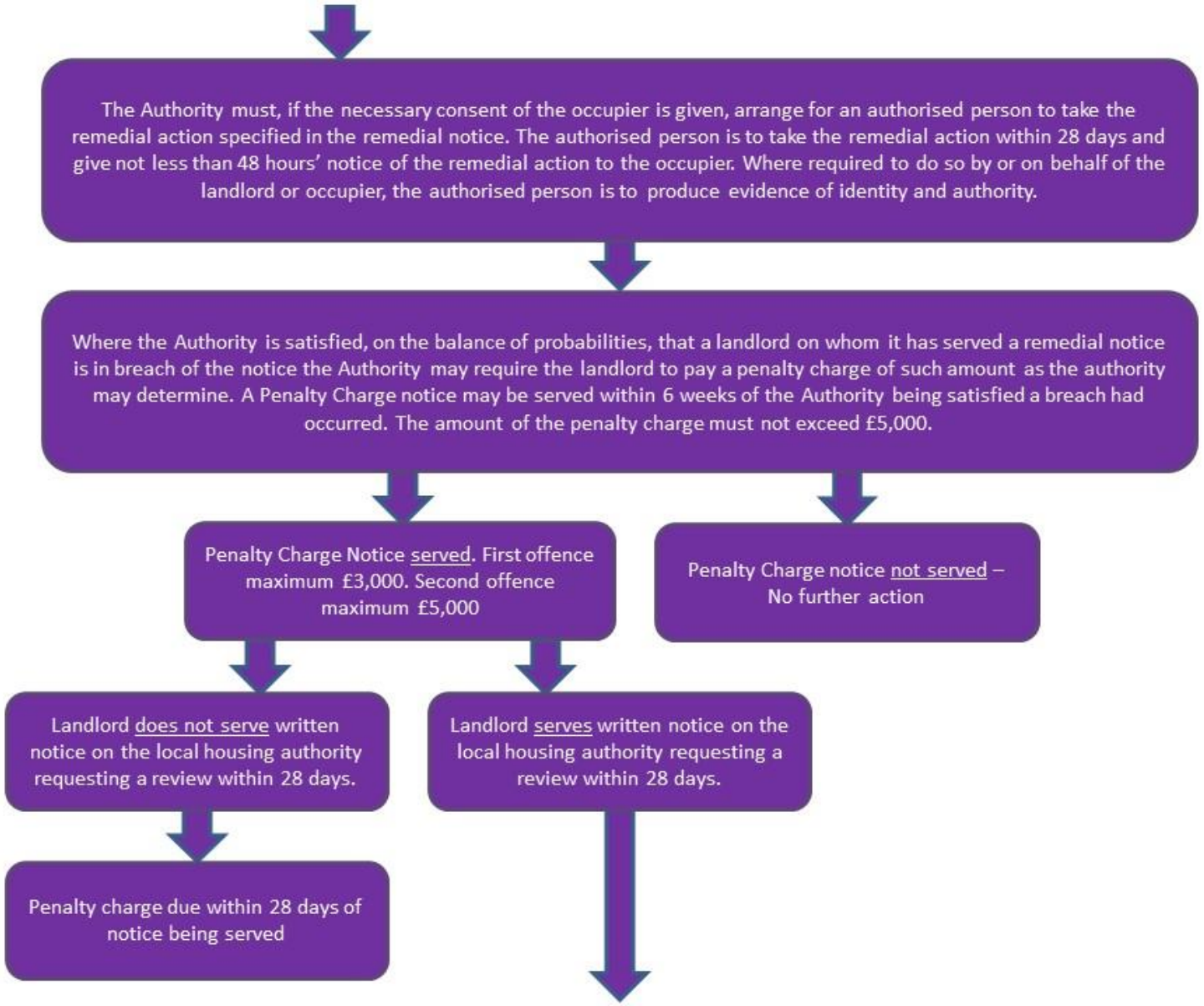


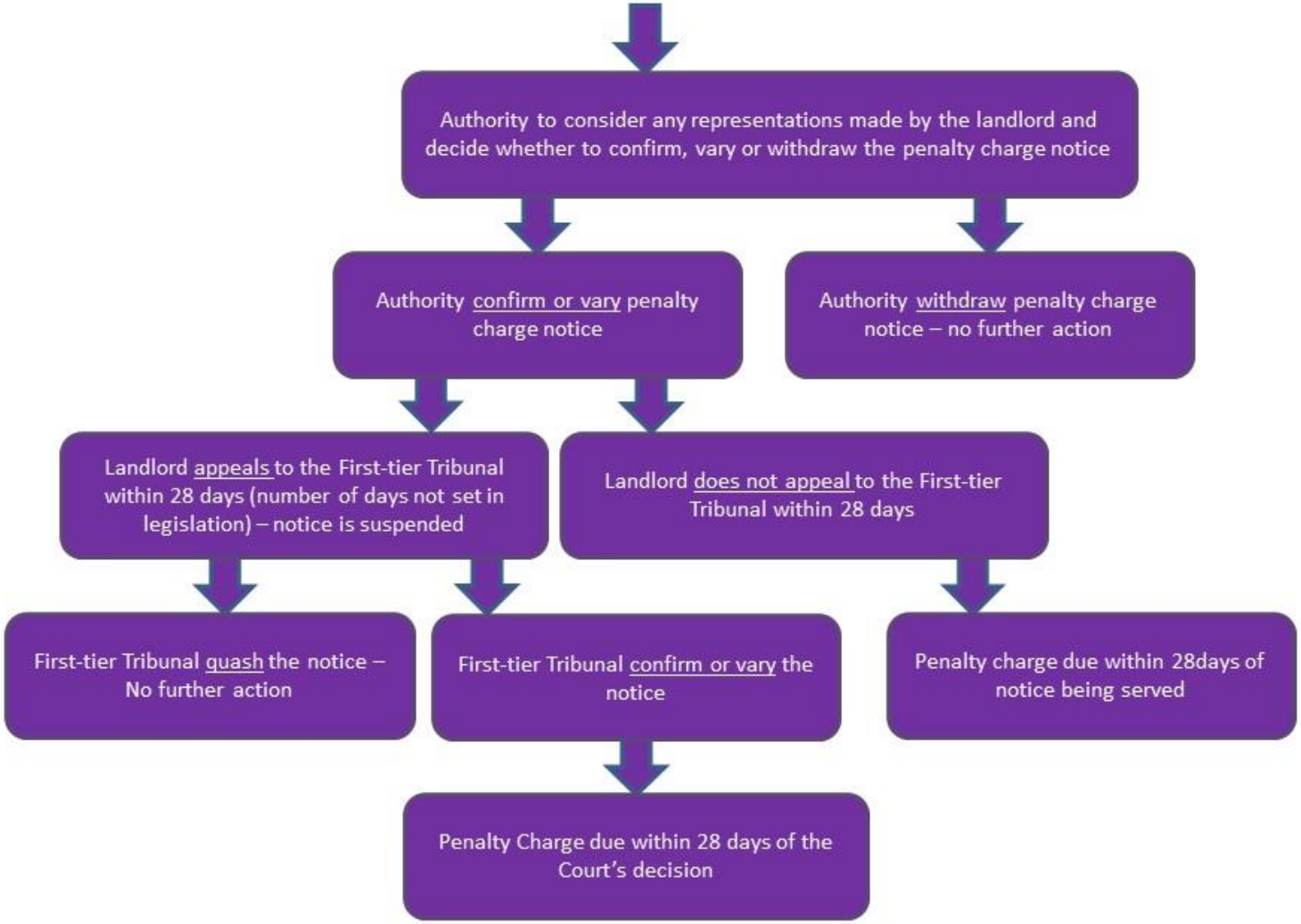

Landlord serves notice that they request a review of the Penalty Notice within 1 month of notice being served
Landlord does not request a review
Authority withdraws notice and serves a Withdrawing the Penalty Notice due to (a) ceases to be satisfied that the landlord committed the breach specified in the penalty notice, (b) is satisfied that the landlord took all reasonable steps and exercised all due diligence to avoid committing the breach specified in the penalty notice, or (c) decides that in the circumstances of the case it was not appropriate for a penalty notice to be served on the landlord,
– No further action
Authority confirm notice by serving a Confirmation of Penalty Notice where the Authority may (a) waive a penalty, (b) allow the landlord additional time to pay any financial penalty, (c) substitute a lower financial penalty where one has already been imposed, or (d) modify the application of a publication penalty.
Landlord appeals the Penalty Notice within ????? days to the First-tier Tribunal
Landlord does not appeal the Penalty Notice
Authority may issue a further Penalty Notice
Tribunal quash the notice
Tribunal affirm the notice
Monies paid (if any) to be returned to landlord – no further action
Landlord complies with actions required on the Penalty Notice
Landlord does not comply with actions required on the Penalty Notice


Landlord does not pay the Penalty Notice
Landlord pays the Penalty Notice – no further action
Proceedings can commence to recover financial penalty but not:
(a) before the expiry of the period specified for requesting a review under regulation 38(2)(h)(ii), (b) where a review has been requested under regulation 42(1), before the enforcement authority has served notice of its decision under regulation 42(2)(c), and (c) where the enforcement authority has served a notice of its decision under regulation 42(2)(c) confirming the penalty notice, before the expiry of the period within which the landlord may appeal to the First-tier Tribunal.

Appendix 6
Smoke and Carbon Monoxide Breach - Process Flow Chart




The Authority must, if the necessary consent of the occupier is given, arrange for an authorised person to take the remedial action specified in the remedial notice. The authorised person is to take the remedial action within 28 days and give not less than 48 hours' notice of the remedial action to the occupier. Where required to do so by or on behalf of the landlord or occupier, the authorised person is to produce evidence of identity and authority.
Where the Authority is satisfied, on the balance of probabilities, that a landlord on whom it has served a remedial notice is in breach of the notice the Authority may require the landlord to pay a penalty charge of such amount as the authority may determine. A Penalty Charge notice may be served within 6 weeks of the Authority being satisfied a breach had occurred. The amount of the penalty charge must not exceed £5,000.
Penalty Charge Notice served. First offence maximum £3,000. Second offence maximum £5,000
Penalty Charge notice not served – No further action
Landlord does not serve written notice on the local housing authority requesting a review within 28 days.
Landlord serves written notice on the local housing authority requesting a review within 28 days.
Penalty charge due within 28 days of notice being served


Authority to consider any representations made by the landlord and decide whether to confirm, vary or withdraw the penalty charge notice
Authority confirm or vary penalty charge notice
Authority withdraw penalty charge notice – no further action
Landlord appeals to the First-tier Tribunal within 28 days (number of days not set in legislation) – notice is suspended
Landlord does not appeal to the First-tier Tribunal within 28 days
First-tier Tribunal quash the notice – No further action
First-tier Tribunal confirm or vary the notice
Penalty charge due within 28days of notice being served
Penalty Charge due within 28 days of the Court's decision